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# MUST AN ACKNOWLEDGMENT OF A DEBT BE ADDRESSED OR COMMUNICATED TO THE CREDITOR ?

In the case of *Imam Ali* v. *Baij Nath Ram Sahu* [1] SIR FRANCIS MACLEAN, C. J., and MOOKERJEE J. considered the question whether an acknowledgment of a debt must, to be operative under S. 19 of the Limitation Act, be addressed or communicated to the creditor or to some one on his behalf, and answered it in the affirmative. Except for the high authority of the learned Judges with whose names the decision is associated, we should unhesitatingly have answered it in the negative. Out of the respect that is due to any considered pronouncement of such eminent Judges, and for the reason that the decision itself purports to be based upon a ruling of their Lordships of the Judicial Committee, we propose to dwell upon the matter at some length to see if the view of the learned Judges can be supported by the language of the section and of the last clause of Explanation (i) thereto, by the policy underlying the enactment thereof, or by the authority of decided cases.

The suit was one for sale upon a mortgage. The mortgage was of various items of property. Subsequent to the date of the mortgage, the equity of redemption in some of the items was sold to different persons, one of whom was, at the instance of the plaintiff, made a defendant only after the institution of the suit and at a time when it would be barred as against him but for an admission by the mortgagor relied upon as an acknowledgment under S. 19. The admission was contained in a deed of sale executed by the mortgagor in favour of a third party, who was also a defendant in the suit, whereby the equity of redemption

1. (1906) I. L. R. 33 C. 613.

in another item of the mortgaged property was conveyed to him, and was to the effect that the conveyance was executed for discharging the plaintiffs' mortgage. It was contended that this was no valid acknowledgment because there was no admission of liability to the mortgagees (plaintiffs), nor was it communicated or addressed to them. And the learned Judges upheld this contention relying, in support of their view, upon the decisions of the Privy Council in *Mylapore* v. *Ye Kay* [1] and of Sir CHARLES SARGEANT in *Mahalakshmi Bai* v. *Firm of Nageshwar.*[2] They distinguished the cases of *Sukho Moni* v. *Ishan Chander*[3] (also a decision of the Privy Council) and *Madhu Sudan* v. *Broja Nath*[4] relied upon for the contrary view on the ground that in each of those cases the admission was, if not addressed, communicated to the creditor. And an argument against their view founded on the last clause of Explanation (i) to the Section they met by the observation that the Explanation did not say that such an acknowledgment *should* be held sufficient but that it merely provided that it *might* be held sufficient. We venture to submit that the view of the learned Judges is erroneous; that the Privy Council case relied upon by them decides nothing of the kind; that the distinction suggested by them between their case and the Privy Council case of *Sukho Moni* v. *Ishan Chander*[3] is not based upon principle or authority; and that the remark with which they brushed aside the argument based upon the Explanation is unsatisfactory and unsound. We now proceed to elaborate these points. And first we take the Section and Explanation (i).

Section 19 runs thus: "If, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed or by some person through whom he derives title or liability, a new period of limitation, etc." Its language is clear and presents no difficulty whatever. According to the section, an acknowledgment to be valid must be (1) an acknowledgment of liability

1. (1887) L. R. 14 I. A. 168; 14 C. 801.
2. (1885) I. L. R. 10 B. 71.
3. (1898) I. L. R. 25 C. 844 (P. C.)
4. (1871) 6 B. L. R. 299.

in respect of the property or right claimed; (2) made before the expiration of the prescribed period; (3) in writing signed by the party against whom it is claimed or some one through whom he derives title or liability. It makes no reference to, and must be therefore assumed not to require, the additional condition that the acknowledgment must be addressed to the creditor or to some one on his behalf, or indeed that it must be addressed to a third party at all. Is there anything then in the Explanation which militates against this view? The Explanation says (we quote only so much of it as is relevant to the present discussion) : " For the purpose of this section an acknowledgment may be sufficient though it is addressed to a person other than the person entitled to the property or right." The use of the auxiliary "may," in the view of the learned Judges, vests a discretion in the Court to accept or not as sufficient an acknowledgment not addressed to the creditor or to some one through whom he claims, and does not make it obligatory upon it to do so in all cases. We beg to submit that it does no such thing whatever and that the Legislature had, having regard to the context, no option but to use the auxiliary "may." The Explanation says, for our present purpose, that an acknowledgment may be sufficient though it is addressed to a person other than the person entitled to the property or right. It only says that the acknowledgment need not be addressed to the creditor or to some one claiming on his behalf. But it does not say, and cannot say, whether an acknowledgment not addressed to the creditor or to some one claiming on his behalf is sufficient to save the bar of limitation as that must depend upon whether it complies with the requirements of the body of the section. In short the appropriateness of the auxiliary will become manifest if the Explanation is read thus: "An acknowledgment may, if it complies with the requirements of the body of the section, be sufficient though it is addressed to a person, etc." Even if this explanation is not accepted, we still think that the construction put by the learned Judges upon the Explanation is erroneous.

Now the ordinary, natural sense of the auxiliary "may" is, no doubt, permissive and not obligatory. It gives a discretion to the donee of the power to do a particular thing and cannot make it imperative upon him. In some cases, however, the questio-

arises whether it becomes obligatory upon the donee to exercise the power upon a particular occasion or in a particular manner. This must, according to the view of the highest Court of Appeal (*Julius* v. *Lord Bishop of Oxford*[1]) be determined *aliunde*, and in general, from the context, from the particular provision, or from the general scope and object of the enactment conferring the power. Let us apply this test to the Explanation and see what is the conclusion to which we are led.

The Explanation says that an acknowledgment may be sufficient, though it is addressed to a person other than the person entitled to the property or right. It was, as the learned Judges themselves pointed out, added for the first time in the Act of 1871 to give effect to the decisions in *Dur Gopal* v. *Kashee Ram*[2], *Nijamudin* v. *Mahammadali*[3], *Ahiloji Valad* v. *Dongar Harichand*[4] and *Ali Hossein* v. *Ram Dayal*[5]. Now the provision in the Act of 1859 corresponding to that in S. 19 of the Act of 1877 was, for our present purposes, no doubt the same. All that, under that Act also, was required for a valid acknowledgment was that it should be in writing, and it was also not in terms provided that it should be addressed to the creditor or to some one on his behalf. But the English law has always been different. Under it, an acknowledgment addressed to a person other than the person entitled to the property or right has always been held insufficient to save the bar of limitation. And in the cases quoted above, it was contended on the analogy of the English law, that an acknowledgment, to be valid, must be addressed to the creditor or to some one on his behalf But this contention was overruled and it was expressly pointed out that, by omitting the express provision in the English Act, that the acknowledgment must be given to the mortgagor or to some person claiming his estate or to the agent of such mortgagor or person, the Indian Legislature deliberately departed from the rule of English law. And the Explanation was inserted not, it is submitted, for the purpose of leaving it to the presiding Judge to say whether or not he will accept the acknowledgment as sufficient, but for indicating that the above cases

1. (1880) L. R. 5 App. Cas. 214, 235.
2. (1865) 3 W. R. C. R. 3.
3. (1868) 4 M. H. C. R. 380.
4. (1867) 5 B.H.C. R.A.C. J. 176.
5. (1871) 3 N. W. 78.

were rightly decided, lest from the absence of such express provision it should thereafter be argued that the Legislature did not recognise them as good law. Instances are not rare in enactments of an exception, a proviso, or an explanation being inserted, not really because the case provided for in it is an exception or a proviso to, or an explanation for that provided by the section itself, but because prior to its enactment there was some doubt about the provision in the exception, etc., and the Legislature, by way of abundant caution, is anxious to remove it. The last clause of Explanation (i) to S. 19 seems to us to be enacted for such a purpose.

Again, if the cases, which have laid down that the use of the auxiliary " may " indicates that the Legislature conferred a power upon the Court or Judge which before it he had not, are examined, it will be seen that in all of them the form employed by the Legislature is " The Court may," etc.—a form peculiarly adapted for expressing its object. In the case before us, however, the form employed is : " An acknowledgment may be sufficient though addressed to a person other than the creditor." This form does not indicate, nay, it cannot indicate, that any power has been conferred upon anybody. It is declaratory, and declares that the Legislature regards such an acknowledgment as sufficient. In this view, there can be no room for the suggestion that the Legislature intended to vest a discretion in the Court to accept or not an acknowledgment as sufficient which was not addressed to the creditor. It may be observed, in passing, that the language of the Explanation is borrowed from the decisions to give effect to which the Explanation is admitted to have been added.

That the view we have been contending for is the correct view is pointed to also by another provision in the Act dealing with the same subject of acknowledgment. Article 180 of the Act of 1877 (the law enacted by this article has been the same under all the three Acts) gives a period of 12 years for enforcing a judgment, etc., of a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, and the third column provides that when some acknowledgment of a present right to enforce the judgment, etc., *has been given in writing*

signed by the person liable to pay such principal or interest or his agent *to the person entitled thereto or his agent*, the period of 12 years shall be computed from the date thereof. Here, it will be seen, it is expressly provided that the acknowledgment should be given to the person entitled or his agent. It may with force be argued that if the Legislature intended to provide that acknowledgments under S. 19 should also, as a rule, be addressed to the creditor or to some one on his behalf and to vest a discretion in the Court to accept it only in some cases, it would have adopted a different mode of expressing itself and not left it to be spelt out of an explanation.

Nor does the context suggest a different view. The provision concerning the sufficiency of acknowledgments addressed to a person other than the creditor or to some one through whom he claims does not stand by itself but forms part of a lengthy explanation providing for various other matters also, and it has never yet been even suggested that in those cases the Court is not bound to accept the acknowledgments as sufficient but is given a discretion to accept them or not as it likes. Thus it has always been the law that an acknowledgment is sufficient though it omits to specify the exact nature of the property or right, though the maker avers that the time for payment, delivery, performance or enjoyment has not yet come, and so on. Further, if the view of the learned Judges is to be accepted as correct, it is difficult to imagine, and the learned Judges have not themselves indicated, circumstances guiding the exercise of the discretion.

It may be that the learned Judges were influenced in their decision by considerations of the English law on the subject. Indeed their reference to the rule of the English Common Law as finally settled by decisions, subject to exceptions created by Statute, would seem strongly to point to their having been misled thereby. The English law, no doubt, requires that an acknowledgment, to be operative, must be addressed to the creditor. But that is because of the peculiar principles of the Common Law with respect to the cause of action. It is incumbent on the plaintiff in an action of *assumpsit* (which corresponds to our action for recovery of debt due) to aver in the declaration and to prove a promise by the defendant to pay the debt made within

the period of limitation. In fact the material and the only issue in the case is whether or not the defendant did make the promise within the prescribed period. The promise may, however, be express or implied, and, if the latter, it may be implied from an acknowledgment of the debtor; but the acknowledgment ought to contain an unqualified and direct admission of a previous subsisting debt, which the party is liable to and willing to pay. Accordingly, if the acknowledgment is accompanied by such qualifying expressions or circumstances as repel the idea of an intention or contract to pay, no implied promise is created and the acknowledgment is not sufficient to form the ground of an action. Thus it has been held in England that an acknowledgment of indebtedness qualified by expressions indicating that the debtor is unable or unwilling to pay the debt at the time or that the time for paying it had not come is insufficient. It is therefore also necessary, having regard to the purpose served by an acknowledgment under the English law, that it should be addressed to the creditor.

The principles of these decisions will not apply to cases arising under the Indian Limitation Act. Under it an acknowledgment merely revives the debt and does not itself afford a cause of action. It need not amount to a promise to pay the debt, but it is sufficient if it admits a liability subsisting at the date of the admission. Accordingly, under the Indian Act, an admission is sufficient acknowledgment, though it is accompanied by expressions of inability or unwillingness to pay at the time or indicating that the time for payment had not come. It is also unnecessary for an acknowledgment to be operative under it that it should be addressed to the creditor. For the distinction between the English and the Indian Law as to sufficiency of an acknowledgment and the purpose served by it, see *Nijamudin* v. *Mahammadali*[1] ; *Gopee Kishen* v. *Brindabun Chunder*[2].

It is, therefore, clear that if regard is had to the language of the section, to the object of the Legislature in enacting the Explanation, to the provision itself and to the context in which the provision occurs, and to the difference underlying the theory of an acknowledgment between the English and the Indian Law, the only tenable conclusion is that the Court is bound to accept

1. (1868) 4 M. H. C. R. 385 (306.)  2. (1879) 13 M. I. A. 37 (54).

as sufficient an acknowledgment which satisfies the requirements of the section even though it is addressed to a person other than the creditor or a person through whom he claims.

And this is the view which has almost always been taken of the provision in the Explanation by the Courts in India—we say "almost always" advisedly because there is a decision of SIR CHARLES SARGEANT in *Mahalakshmi Bai* v. *Firm of Nageshwar*,[1] to be presently referred to, which favours the view of the learned Judges. Thus, acknowledgments in a deposition—*Venkata* v. *Parthasaradhi*[2], *Peria Venkan* v. *Subramaniyam Chetti*[3], *Narayana* v. *Venkataramana*[4]; in a written statement—*Venkataratnam* v. *Ramaraju*[5], *Strinivasa Krishna* v. *Narhar Khando*[6]; in a letter written by the debtor to his agent—*Ambica Dat* v. *Nityanund*[7]; in a will executed by the mortgagee to his son—*Uppi Haji* v. *Mammavan*[8]; in a deed of conveyance executed by the obligor to which the obligee was not a party—have always been held to be sufficient. For the latest cases on the point, see *Abdul Ali* v. *Von Goldstein*[9]; *Strinivas Krishna* v. *Narhar Khando*[6]; *Lacchmi Chand* v. *Allah Din*[10] and *Brojo Nath* v. *Gaya Sundari*[11].

The decision in *Mahalakshmi Bhai* v. *Firm of Nageshwar*[1], no doubt, is opposed to our contention and supports the view of the learned Judges. It was held in that case that the Explanation contemplated an acknowledgment being "addressed" to the creditor and that, as the acknowledgment in that case was not communicated to the creditor or to some one on his behalf, it was not sufficient. With the greatest deference to the learned Chief Justice, we are constrained to say that the decision is wrong. The judgment is very short, the point is not at all discussed, and no authority is cited in support of the view there held. And, as in the Calcutta case, the Explanation, which expressly obviates the necessity of an acknowledgment being addressed to the creditor, is pressed into service in support of the contrary view. The decision is considered to be erroneous also by STARLING, who expressly says so in his *Commentaries on the*

1. (1885) I. L. R. 10 B. 71.
2. (1892) I. L. R. 16 M. 220.
3. (1896) I. L. R. 20 M. 239.
4. (1902) I. L. R. 25 M. 220 (232).
5. (1901) I. L. R. 24 M. 361.
6. (1908) I. L. R. 32 B. 296.
7. (1903) I. L. R. 30 C. 687.
8. (1893) I. L. R. 16 M. 366.
9. (1906) 10 P. L. R. 66.
10. (1907) (1908) A. W. N. 226.
11. (1906) 6 C. L. J. 141.

*Indian Limitation Act* (see page 96), and by MITRA who, though he does not expressly say so, says that under all the three Limitation Acts an acknowledgment need not be addressed to the creditor (see *Commentaries on the Indian Limitation Act*, Vol. i, page 326, foot-note 10).

Leaving, therefore, the decision of SIR CHARLES SARGEANT as erroneous and as wholly opposed to the decisions of all the Courts in India, we see that according to the said decisions, an acknowledgment is sufficient though not addressed to the creditor. Having regard, therefore, to the circumstance that the language of the Explanation is at least ambiguous and permits of both views, that the decisions of the Indian Courts are almost all one way, and to the principle recognised by Courts of Justice that "where rights have been regulated and arrangements as to property made on the faith that the law was as laid down it may be right to follow the decisions", we should, if the matter had rested here, have strongly protested against any change in the view as to the scope of the Explanation. But, it is said, there is a ruling of their Lordships of the Judicial Committee sanctioning the view of the learned Judges, and *Mylapore* v. *Yeo Kay*[1], is cited for the purpose. It is unnecessary to say that if the case did lay down the rule of law for which it was relied upon, the matter would be concluded and the formidable array of Indian decisions would not avail us at all. We venture to submit that their Lordships were not called upon to consider, and did not in fact consider, the question whether an acknowledgment, to be operative, must be addressed to the creditor or to some one on his behalf. As this is evidently the strongest point in favour of the view of the learned Judges, we offer no apology for setting out the facts of the case and the judgment of their Lordships *in extenso* in so far as they are relevant to the topic on hand.

The suit was by a devisee for possession of immoveable property. The devise was to 5 brothers, members of a Hindu family, by names Ramaswami, Krishnaswami, Subbaraya, Coomaraswami, and Vyapuri (*alias* Mylapore) plaintiff in the suit and appellant before their Lordships. Under Article 140 of the Limitation Act of 1877, the plaintiff has, to institute such a suit, a period of 12 years from the time when his estate falls into

1. (1887) L. R. 14 I.A. 168; 14 C. 801.

possession, that is from the date of the death of the testator. But he instituted it only after the period prescribed by the Article, and the lower Courts found that the testator died on 19th September 1864; that Ramaswami obtained Letters of Administaration and remained for some time in exclusive possession of the properties; that in or about 1869 he mortgaged them with possession to a Mr. Bennett who instituted a suit upon his mortgage, and, in April 1871, bought them himsef in execution of the decree obtained thereon; that in April 1874, Bennett, as the duly authorised agent of Subbaraya and Coomaraswami, conveyed a half share in them to the defendants in the suit; that all along Bennett and the defendants remained in exclusive possession; and that the suit itself was instituted only on 12th September 1883. On these findings, they held the suit barred. On appeal to their Lordships, Mr. Mayne sought to get over the bar of limitation by contending that the devisees being members of a joint Hindu family, possession of Ramaswami was not adverse to the other brothers; that, as the mortgage to Bennett was on behalf of the family, his possession as mortgagee was also not adverse to the brothers; and that even after his purchase in 1871 he continued to hold the properties on behalf of the family as was shown by his admission contained in the conveyance of 1874 executed by him as agent of Subbaraya and Coomaraswami. In that conveyance, Mr. Mayne contended, Bennett admitted that he held the properties on behalf of the devisees. Their Lordships accepted the findings of the Courts below, and, with reference to Mr. Mayne's argument, observed as follows:—

"Then it was contended that by virtue of S. 19 of the Limitation Act, an admission had been made which gave a further period from which the right of bringing the action was to be dated." Their Lordships then set out the terms of the Section and proceeded: "But what liability does this mean? It must mean a liability to the person who is seeking to recover or some one through whom he claims. Was there any admission made in this case by Mr. Bennett at any time, or by any of the defendants? The admission is said to have been made by Mr. Bennett in the conveyance which was executed in 1874. It is contended that in that conveyance Mr. Bennett admitted that he was liable in respect of the property. The only admission is that he

was acting as agent for one of the executors in selling the estate. He was selling the estate for the purpose of getting paid out of the proceeds of the sale. He does not admit that he was liable to be turned out of possession, or that any one had a right of possession as against him, *nor does he make any admission at all to the plaintiff or to any one through whom he claims.* Under these circumstances the clause does not apply. No liability has been admitted to take the case out of the Statute of Limitations."

A Court called upon to consider whether a piece of writing of the obligor constitutes a sufficient acknowledgment within the meaning of S. 19 of the Act must inquire—

(1) whether there is in the writing any admission at all;

(2) if there is, what is the nature of the liability required to be admitted by the Section;

(3) whether the liability admitted by the writing is of the nature required by the Section;

(4) what is a sufficient acknowledgment within the meaning of the Section and of the Explanation, in particular, whether the writing must be addressed to the creditor or to some one on his behalf;

(5) whether the writing, relied upon as an acknowledgment, is a sufficient acknowledgment.

Now if the writing in question contains no admission at all, that is, if question (1) is answered in the negative, the other questions will not arise for consideration. But if it does, the question of law, the second of the above questions, what is the nature of the liability required to be admitted by the section, and that of fact, the third question, whether the liability admitted by the writing is of the nature required by the section, will have to be considered. Again, if the writing admits a liability, but not liability of the kind required, the further question of law, the fourth question, whether the writing must be addressed to the creditor or to some one on his behalf, and that of fact based thereon, the fifth and last question, whether the writing is so addressed, will not require to be considered.

It will be seen from the above extract from their Lordships' judgment that this is exactly the line of investigation that they

adopted. They open their judgment with the remark that an "admission" (their Lordships used the word "admission" for the word "acknowledgment" in the section) was relied upon in the case which would save the bar of limitation. Thus they admit that the writing in the case contained an admission. Then they proceed to consider what is the nature of the liability required to be admitted by the section, and, whether the writing in the case admitted liability of the kind required. In doing so, they set out the section and define the liability contemplated by it as "a liability to the person who is seeking to recover possession, or some one through whom he claims." And in answering the question, whether the writing in the case admitted liability of the kind required, their Lordships hold that it did not. They hold that in executing the conveyance in 1874 wherein Bennett was alleged to have admitted the title of the devisees, including the plaintiff, to the properties conveyed thereby and to others of which he was in possession, Bennett no doubt admitted that he was acting as agent for one of the executors and ought to get himself paid out of the proceeds, but he did not admit his liability to be turned out of possession of the properties or the right of plaintiff or any one through whom he claimed to turn him out of possession. The investigation is concluded with the remark that the clause (S. 19) did not apply as no liability had been admitted to take the case out of the Statute of Limitations.

If we are right in our analysis of the nature of the inquiry to be made in a case arising under the section and of the judgment of their Lordships, it becomes abundantly clear that far from their Lordships having laid down that an acknowledgment to be sufficient must be addressed to the plaintiff, which would be an answer to the fourth of the questions we have mentioned above, they did not consider, and could not have considered, that question because no liability of the kind required by the section was admitted in the case before them (see the last two sentences in the extract from their judgment). All that they did consider was what was the nature of the liability required to be admitted by the section, and, whether there was, in the case before them, an admission of liability of the kind required.

That this is the correct understanding of the decision is shewn by the fact that the Explanation is not referred to at all in

the judgment though the Section itself is fully set out, and that this is how the decision has always been understood by commentators on the Indian Limitation Act—MITRA and STARLING—and by Judges—WILKINSON J. in *Venkata* v. *Parthasaradhi*[1], and SIR ARNOLD WHITE C. J. and BHASHYAM AIYENGAR J. in *Narayana* v. *Venkataramana*[2]. It may not be impertinent to point out that the italicised passage in the judgment on which the learned Judges rely is somewhat misleading and that there would have been no room for any such misconception if it ran, as, from our analysis of their Lordships' judgment, it would be obvious it was intended to run : " nor does he make any admission at all *of liability* to the plaintiff or to any one through whom he claims." The mistake into which the learned Judges have fallen may also well be due to the concession made by the Vakil for the respondents (so we gather from the statement in the judgment) that their Lordships did lay down the rule stated by the learned Judges, his suggestion being that in doing so they overlooked the provisions of Explanation (i). For the reasons above stated, we think the more accurate way of stating it would have been to say that the Privy Council were not called upon to, and did not lay down any such rule.

Even if the italicised passage in their Lordship's judgment can be construed to lay down any such rule, the observation is at best *obiter* and not much reliance can safely be placed on it in the face of other decisions, also of the Privy Council, in *Fatimatulnissa* v. *Sundar Das*[3] which strongly points to, and in *Sukha Moni* v *Ishan Chander*[4] and *Maniram Seth* v. *Seth Rupchand*[5] which expressly lay down, the contrary view.

In *Fatimatulnissa* v. *Sundar Das*[3], the suit was by a mortgagor for recovery of the mortgaged property. It was instituted more than 60 years from the date of the mortgage and would be barred but for the alleged sufficiency of certain admissions of the mortgagees recognising the title of the mortgagor or of his right to redeem. The admissions were contained in a plaint and a written statement of the mortgagee filed in certain previous proceedings. The pleadings themselves had been destroyed

1. (1892) I. L. R. 16 M. 220 (228). 2. (1902) I. L. R. 25 M. 220 (232).
3. (1900) I. L. R. 27 C. 104 P. C.. 4. (1898) I. L. R. 25 C. 844 (P. C.)
5. (1906) I. L. R. 33 C. 104 (P. C)

and could not be produced, but the copies of the decrees in those suits, which were produced, recited the pleadings. The Subordinate Judge considered that he was bound to presume that the pleadings were signed by the mortgagees because the law required them to do it, and so held the acknowledgment sufficient to save the bar. But the High Court, on appeal, reversed his decree on the ground that under the then law plaints required to be signed only by the Vakil and written statements did not require any signature at all, and therefore there could be no presumption that any such acknowledgment as the Acts of 1859 and 1871 (the case was under the old Acts but the law then was the same as that enacted by S. 19 of the Act of 1877) required was given. And their Lordships of the Judicial Committee accepted the view of the High Court and disposed of the point of acknowledgment. Now it is perfectly clear that if the High Court and the Privy Council had accepted the view of the Subordinate Judge that even under the old law plaints and written statements required to be signed by the parties, they would have held, as the Subordinate Judge did, that the admissions relied upon were sufficient acknowledgments within the meaning of those Acts, sufficient though not addressed to any body at all, much less to the creditor.

*Sukha Moni* v. *Ishan Chander*[1] is a stronger authority in favour of the view advanced in the present article, and in our opinion, expressly decides the point. The suit was by a co-owner against another co-owner for contribution of the latter's share of a debt raised for their joint benefit and discharged solely by the former. It was assumed before their Lordships that the period for bringing such a suit was three years and the suit would have been barred but for the validity of certain admissions by the defendant co-owner. The admissions were contained in a petition presented some time before the suit by the co-owners for the appointment of a manager for the protection of their joint property by the payment of their joint debts. One of the directions given to him was to apply the surplus income to the payment of the joint debts of the co-owners and to the petition was appended a list enumerating the joint debts. It was contended before their Lordships that the admission in the above petition was

1. (1898) I. L. R. 25 C. 844 (P. C)

only an admission of liability to the creditors, without specifying a debt to the plaintiff co-owner, and that therefore it gave no new starting point for limitation. With reference to this contention their Lordships observed that it was not necessary under the Act, that an acknowledgment should specify every legal consequence of the thing acknowledged; and that, as in the particular case the defendant acknowledged a joint debt, the legal incidents of her position as joint debtor with the plaintiff, one of which was that the latter might sue her for contribution, followed.

This decision again held that an acknowledgment in a petition presented to the Court was sufficient under the Act. Their Lordships must have been perfectly aware that the acknowledgment in such a case could not be addressed to the creditor; and yet, though they did not quote the Section and the Explanation, they held that such an acknowledgment was sufficient. The absence of an express citation of the Section and of the Explanation, far from warranting the somewhat nice distinction suggested by the learned Judges, strongly indicates that their Lordships thought, as the counsel in the case seems to have done (for we do not find any argument to the contrary based on the Explanation) that the point was beyond dispute. What is more, though the counsel cited *Mylapore* v. *Yeo Kay* [1], in the course of the argument, their Lordships did not make any point of it. Why, even the counsel himself cited it, not for the position the learned Judges of the Calcutta High Court thought it had laid down, *viz.*, that an acknowledgment must be addressed to the creditor, but for the position that *the liability must be acknowledged as incurred to the plaintiff* (see page 849 of the report). This again shows what *Mylapore* v. *Yeo Kay* [1] is generally understood to have decided.

It seems to us, therefore, that *Sukho Moni* v. *Ishan Chander* [2], is an express decision of the Privy Council opposed to the view of the learned Judges of the Calcutta High Court and that in the face thereof, their view is not tenable. But the learned Judges attempted to get over it by suggesting the distinction that in that case as well as in the case of *Madhu Sudan* v.

1. (1887) L. R. 14 I. A. 168 : 14 C. 801, 2. (1898) I. L. R. 25 C.884 (P.C.)

*Broja Nath* [1], a decision of the Calcutta High Court, the acknowledgment was, if not addressed, communicated to the creditor or to some one on his behalf. Again, with all respect to the learned Judges, this distinction seems to us not founded on principle or authority. Authority there is none to warrant the distinction. The language of the Explanation does not suggest it, nor is there, in the decision of *Sukha Moni*[2] itself, anything to favour it. And the learned Judges themselves have not suggested any principle in favour of it. This attempt to whittle away express decisions of the highest Court of Appeal is unsatisfactory and undesirable, especially when doing so would shake rights and titles which had been founded through many years on the conviction that the view we have been contending for was the right view and would not be departed from. Further, it is a well settled canon that in understanding decisions of Courts we ought not to substitute for the reasons given by the decisions themselves in support of their conclusions what may appear to us to be very good reasons for the same.

We are glad we are not obliged to pursue this course of reasoning and press the decision in *Sukho Monis' case* [2] against the learned Judges, for we find, in the very volume in which the Calcutta case is reported, another decision of the Privy Council in terms referring to the Explanation and expressly laying down that under it an acknowledgment need not be addressed to the creditor—see *Maniram Seth* v. *Seth Rup Chand* [3]. In that case the acknowledgment relied upon was contained in a reply petition filed by the debtor in certain probate proceedings, and it was held to be a valid acknowledgment, although not addressed to the creditor. This decision, therefore, concludes the matter, and in the face of it, the decision of the learned Judges can no longer be good law.

A. VISVANATHA AIYAR.

## NOTES OF INDIAN CASES.

**Emperor** *v.* **Soorindra Mohan Chuckerbuty**: I.L.R. 37 C. 412 and **Emperor** *v.* **Lalit Kumar Chatterjee**: I.L.R. 37 C. 439.—The question in these cases was how far the

1. (1871) 6 B. L. R. 229.
2. (1898) I. L. R. 25 C 884.
3. (1906) I.L.R. 33 C. 1047 (P.C.) 1058.

provisions of the Criminal Procedure Code as to bail are applicable to cases to which the provisions of Part I of Act XIV of 1908 have been applied. S. 498 of the Cr. P. Code enacts that the High Court or Court of Sessions may in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a Police officer or Magistrate be reduced. In the first case under notice it was held that the power of the High Court to grant bail in any case under S. 498 of the Cr. P. Code was not affected by Act XIV 1908 as that was in no way inconsistent with the procedure prescribed in Part I of Act XIV 1908. Although S. 12 of the Act refers to S. 497 only, the High Court will have regard to that section when exercising their powers under S. 498.

In the second case under notice it was held that the powers conferred upon the Sessions Court under S. 498 were inconsistent with the procedure prescribed in Part I of Act XIV of 1908 and that therefore these powers were abrogated as regards cases to which the provisions of that part were applied. On the whole, having regard to S. 14, Clause I, of Act XIV of 1908, we think the construction placed by the Calcutta Judges is correct.

The High Court pointed out the impropriety of the District Magistrate in refusing to send the record to the Sessions Judge when requested by the latter to do so.

*In re* **Barindra Kumar Ghose & others.**—I.L.R. 37 C. 467.—The observations of their Lordships, and especially those of Sir *Lawrence Jenkins* C.J., as regards S. 196 of the Code of Criminal Procedure and the duties of the Local Government in granting sanction with respect to offences therein mentioned, are very important and should be carefully borne in mind by those concerned. According to the decision, the power reserved to the Local Government by S. 196 of the Criminal Procedure Code, of determining whether cognizance shall be taken by a Court of any offence punishable under Chapter VI of the Penal Code except S. 129, is one which should be exercised by the Local Government itself and which cannot be delegated to any other body. It is a question of State policy whether sanction should be given, and the Legislature having provided, and very properly, that that question shall be determined by the Local Government, it is beyond the competence

of the latter to delegate to any other body or person the controlling power and the discretion implied by the section. Similary the Local Government cannot by its order give its legal or other advisers a roving power to determine under what section of Chapter VI proceedings shall be taken. Such a power implies a delegation which is prohibited by the Section and the abandonment of a responsibility that properly belongs to the Local Government itself. Hence the judgment of the Local Government in granting a sanction should be specifically directed to the particular section of Chapter VI of the Penal Code in respect of which proceedings are to be taken, and the order or authority should be preceded by, and be the result of, a deliberate determination that the proceedings should be taken in respect of a particular section, or particular sections, of the Chapter and no other. We hope that it will be seen that sanctions under this section are not a matter of course and that they should be the result of a deliberate decision and the minds of the Members of the Local Government should be addressed to the consideration of the question. The learned Chief Justice rightly dissented from the case of *Queen-Empress* v. *Bal Gangadhar Tilak*[1] and held that S. 532 of the Criminal Procedure Code could not cure the defect of want of sanction under S. 196. He also pointed out that the case of *Queen-Empress* v. *Morton* followed in the Bombay case arose under S. 197 to which different considerations apply.

With respect to confessions made by certain of the accused, objection was taken that they were not admissible as having been made in contravention of S. 164 of the Criminal Procedure Code. This contention was based on the fact that the Magistrate who recorded the confession was the Magistrate who conducted the preliminary inquiry and who made the commitment. It was found that at the time the confession was recorded by the Magistrate the latter was not holding an inquiry as the requisites for taking cognizance of an offence under S. 190 of the Cr. P. C. had not come into existence, and there was only an investigation. Under the Code of 1898 the law had been altered and the decisions under S. 122 corresponding to the old Code of 1872 or of 1882 could not govern the

1. (1897) I.L.R. 22 B. 288.

construction of S. 164 of the present Code. Under the present Code every Magistrate may record a confession, and an explanation has been added which says : "It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case."

Mr. Justice *Carnduff* discusses the question as to how far statements to the Police by the accused are admissible. A distinction was drawn in a Calcutta case (*Queen* v. *Macdonald* [1]) between a confession and an admission, and it was suggested that while the former was inadmissible under the Evidence Act the latter might be admissible. An admission, however, of a criminating circumstance has been regarded as equivalent to a confession and as such inadmissible if made to a Police officer. Mr. Justice *Carnduff* thinks, however, that admissions of criminating circumstances, although they may tell against the accused, may not amount to confessions and that, under those circumstances, such admissions might be admissible though made to the Police. With due deference we should think there is no warrant for the distinction sought to be made by Mr. Justice *Carnduff* and that a statement which tells against an accused is a criminating circumstance and will therefore come under the rule of exclusion enacted in S. 24 of the Evidence Act.

**Ramratan Kapali *v.* Aswini Kumar Dutt.**—I. L. R. 37 C. 559.—The learned Judges in this case discuss the circumstances under which a joint liability may exist. While there is a combination or conspiracy the liability may be joint, but if there is neither combination nor conspiracy it is neither just nor equitable to fix a joint liability, although in doing the acts the persons may have proceeded upon common grounds. The learned Judges also discuss the application of the English rule that a release of some of the tort-feasors operates in law as a release of every tort-feasor. The learned Judges suggest that the more reasonable and logical rule would be to hold that a release of one without any intention to release the other joint feasors discharges the others only *pro tanto*, but in the view they took as to the nature of the liability the question was not necessary for decision.

1. (1872) B. L. R. App. 2.

**Ramachendra Singh** *v.* **Bhikambar Singh.**—I.L.R. 37 C. 674.—The learned Judges in this case observe: "We are prepared to admit that a tenancy by sufferance would not by itself make the possession of the holder rightful so as to prevent limitation from running; but, at the same time, we are, of opinion, if the landlord or the person entitled to resume the tenancy does anything to indicate his assent to the continuance of the tenancy, that would itself be sufficient to convert the tenancy by sufferance into a tenancy from year to year." In this case there is no question of seeking possession from a tenant by sufferance. The tenant by sufferance, or in one view the tenant for him, died, and his heir entered into possession, and the landlord sought to recover possession from the heir. To such a case Article 139 cannot apply for the reason that the 1st column of the Article is inapplicable. This column runs thus: " By a landlord to recover possession from a tenant." Again, the statement of the learned Judges that " if the landlord does anything to indicate his assent to the continuance of the tenancy that would itself be sufficient to convert the tenancy by sufferance into a tenancy from year to year," can hardly be regarded as laying down a correct principle of law. In order to create a tenancy the existence of the two parties and their mutal assent will be necessary. If the act of one alone is not accepted by the other it cannot be regarded as creating a tenancy. The Article of the Limitation Act applicable would be 144 and the observations of the learned Judges at the end of the judgment would show that they had this Article in mind in holding that there was no bar of limitation.

**Rama Dhin Bania** *v.* **Sewbalakh Singh.**—I.L.R. 37 C. 714.—We are very doubtful about the propriety of the learned Judge's decision that an application under S. 115 of the Civil Procedure Code to revise the order of a Presidency Small Cause Court is one triable by a Judge sitting in the Original Side of the High Court and that the jurisdiction of the High Court in matters of revision of this nature is not an Appellate but an Original Jurisdiction which is vested in a single Judge sitting in the Original Side. The learned Judge's decision is itself based upon the decision of *Sale* J. in *Sarat Chunder Singh* v. *Brojabat Mookerjee*[1] and upon a practice alleged to have been in existence or about 50 years. The decision in *Sarat Chunder's case*[1] is again based upon the so-called practice and also upon the reason

1. (1903) I.L.R. 30 C. 986.

ing that the Supreme Court excercised revisional jurisdiction over the Presidency Small Cause Court and that upon the abolition of the Supreme Court the powers of the latter were vested in the High Court in its original jurisdiction. The revisional powers exercised by the Supreme Court were governed by Article 47 of the Letters Patent of the Supreme Court. That article declares that the Court of Request, now represented by the Court of Small Causes, shall be subject to the order and control of the said Supreme Court of Judicature at Madras in such sort, manner and form as the inferior Courts in that part of Great Britain called England are, by law, subject to the order and control of King's Bench. It may be pointed out that the Supreme Court had no appellate jurisdiction ; in fact, the jurisdiction under the Letters Patent of the Supreme Court was exercisable as a whole by such Court. Even with respect to the different jurisdictions which the Letters Patent mentions as exercisable by the Supreme Court (such as civil, criminal, &c.) the Supreme Court is not a separate Court. See per *Grant* J. in *Bissessur Bonnerji* v. *Ramrutton Roy*[1]. The High Court, however, has an appellate jurisdiction and the High Court in its original jurisdiction is different from the High Court in its appellate jurisdiction. Again, it must be remembered that the jurisdiction of the Court of King's Bench with respect to orders of inferior Courts is mainly appellate and not original jurisdiction[2]—cf. S. 45 of the Judicature Act of 1873. When there is such a difference in the two Letters Patent and when Art. 47 has been completely replaced by the High Courts Act and the Letters Patent issued to the High Courts, there is no warrant for supposing that all the powers of the Supreme Courts on the abolition of such Courts became vested in the High Court in its original jurisdiction. Article 47 can at best be taken to correspond to S. 15 of the Charter act must be remembered that under Article 47 of the Lettes. Patent of the Supreme. Court, the inferior Magistrates are also declared to be subject to the order and control of the Supreme Court and we know that revisional jurisdiction under the Criminal Procedure Code over orders passed by the Presidency Magistrates is not exercisable by the High Court in its original jurisdiction. Indeed we think there is great force in the remark of Sir *S. Subrahmanya Aiyar* J. in *Chappan* v

1. Mor. 185.

2. [It is a matter of history that by a compromise between Hastings and the Chief Justice, the latter was given the control of all Company's Courts from the Sudder Adawlut downwards :—*Vindication of Warren Hastings, by Hastings,* pp 88, 89.—ED.]

*Moidin Kutti*[1] that the jurisdiction exercisable under S. 622 of the old C. P. C or the jurisdiction in revision is only appellate jurisdiction. Mr. Justice *Sale* seems to admit that the power of superintendence vested in the High Court under S. 15 of the Charter Act and under S. 6 of the Presidency Small Cause Courts Act is vested not in its original jurisdiction but in its appellate side.

However this may be, we do not think that there is any argument that can now be based upon a time-honored but rather exploded notion that whatever be the powers of the Supreme Court such powers are bodily transferred to the High Court. The question whether that is so has to be considered in the light of S. 9 of the High Courts Act (24 & 25 Vic., Ch. 104.) That section says that "save as by such Letters Patent may be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court to be established in each Presidency shall have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under this Act at the time of the abolition of such last mentioned Courts." S. 15 of the same statute says that the High Court has jurisdiction over all Courts that may be subject to its appellate jurisdiction. That corresponds to Article 47 of the Letters Patent of the Supreme Court. At any rate, after such an express provision of that nature in the statute constituting the High Court no implication can be raised that something still remains of the powers of the Supreme Court. *Expressio unius est exclusio alterius.* Again, by S. 6 of the Presidency Small Cause Courts Act whatever doubt there may have been is otherwise removed and the Presidency Small Cause Court being declared to be subordinate to the High Court that can only be with respect to the appellate jurisdiction of the High Court. We should, therefore, think that the High Court, in exercising jurisdiction under S. 115 of the New Civil Procedure Code with respect to an order of the Small Cause Court, whether of the Mofussil or Presidency town, is exercising an appellate jurisdiction, and that the Judge exercising the original jurisdiction of the High Court can have no jurisdiction to entertain an application under S. 115.

1. (1898) I L. R. 22 M. 69.

## SUMMARY OF ENGLISH CASES.

### Skipper & Tucker *v.* Holloway & Howard.

[1910] 2 K. B. 630.

*Assignment—Portion of a debt—Validity—Right of assignee to sue—Judicature Act*, 1873, *S.* 25, *Sub-S.* 6.

By a deed of assignment a definite portion of a debt due to the assignor was assigned to the plaintiff. The plaintiff brought a suit to recover the amount from the defendant. *Held* that an ascertained portion of an existing debt could be validly assigned under S. 25, Sub-S. 6, of the Judicature Act.

### Bennet *v.* White. [1910] 2 K. B. 693 (C. A).

*Set-off—Assignment to defendant of debt owed by plaintiff to third person—Action by plaintiff—Set-off by defendant of assigned debt—Practice.*

In a suit by the plaintiff to recover a debt the defendant has the right to set-off a debt which plaintiff owed to a third person who assigned it to defendant. The decision of the Divisional Court reversed.

### Forster *v.* Baker. [1910] 2 K. B. 636 (C.A.).

*Assignment—Judgment-debt—Assignee of part cannot execute in respect of his part.*

An assignee for valuable consideration of part of a judgment-debt applied for leave to issue execution.

*Held* by *Bray* J. and the Court of Appeal that the assignee was not entitled to such leave on the ground that as the original judgment-creditor cannot divide his judgment and issue several executions upon it, the assignee of a part of a judgment-debt cannot have a better right than his assignor.

By *Bray* J. also on the ground that there cannot be an absolute assignment of part of a debt or legal chose in action within S. 25 Sub-S. 6, Judicature Act of 1873 [dissenting from *Skipper & Tucker* v. *Holloway* supra].

### Yates *v.* South Kirby &c. Collieries, Ltd.

[1910] 2 K. B. 538 (C. A.)

*Workman's Compensation Act—Nervous shock—Compensation awardable.*

A workman received a nervous shock while rescuing a fellow-workman from a danger and was consequently incapacitated from work. *Held*, in a suit for compensation, that the accident was one arising out of, and in the course of, the employment, and that the workman was entitled to compensation. "Nervous shock due to accident which causes personal incapacity to work is as much personal injury by accident as a broken leg or any other physical injury."

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**Humphries v. Humphries.** [1910] 2 K. B. 531 (C. A).

*Res-judicata—suit for arrears of rent—Plea of Statute of Frauds not raised—Subsequent suit—Bar.*

In a former suit for arrears of rent under an alleged agreement of lease the defence plea was that there was no concluded agreement of lease but the Statute of Frauds was not raised as a defence. The claim was decreed. In a suit for subsequent rent it was held that the defendant was barred by *res judicata* from raising the Statute of Frauds as a defence by the fact that he had not pleaded it in the first instance.

Decision of the Division Court affirmed.

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**Weatherley and Sons v. International Horse Agency & Exchange, Limited.** [1910] 2 Ch. 297.

*Copyright—List of names—Unfair use of a work.*

Per *Parker* J.—It is said that there can be no copyright in a mere list of names and this may be true where the list of names conveys no useful information whatever, because, to support every copyright, there must be an element of literary value. It may also be true in the sense that every one who by original work compiles some list may publish it as an original list of his own, but it is equally certain that if the list be the subject of copyright at all, no one is entitled in compiling a like list to save himself the trouble of original work by copying an already existing list,. the copyright of which belongs to another.

Speaking of 'unfair use,' the learned Judge says: "An unfair use may be made of one book in the preparation of another, even if there is no likelihood of competition between the former and the latter * * * In preparing these lists the defendants have utilised wholesale, and without permission, lists prepared by the plaintiffs at much trouble and expense. In so doing

they have appropriated the result of the plaintiff's labour and expense to their own use, and even if they have injured the plaintiffs in no other way, they have deprived them of the advantage * * of being able to publish such a book as the defendants' book at much less labour and expense than any one else."

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*In re* **Baskerville: Baskerville *v.* Baskerville.**
[1910] 2 Ch. 329.

*Trustee—Power to let and manage—Power to grant lease of unopened mines.*

A power given to trustees for sale and conversion to let and manage lands does not include the power to grant a lease of unopened mines.

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*In re* **Hoyles : Row *v.* Jagg.** [1910] 2 Ch. 333.

*Statute of Mortmain—Will by a testator with English domicile —Mortgage of freehold in Ontario—Conflict of laws.*

In this case, a testator with an English domicile gave a freehold mortgage in Ontario for charity. At the date of the testator's death, neither under the English law nor under the Ontario law (which in this respect was the same as the English), could such a gift be made as the Statute of Mortmain, 1736, prohibited the gift of land or interest in land to charity. It was, however, contended that a mortgage interest in a foreign territory was only personalty and therefore the Statute did not apply. *Held*: that it was immoveable property to which the *lex loci situs* applied (in this case the Ontario Law) and as a result the gift was bad.

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*In re* **Bridgwater's Settlement :—Partridge *v.* Ward.**
[1910] 2 Ch. 342.

*Mortgagor and mortgagee—Title by Estoppel—Defective title —Defect on the face of the deed.*

Under a marriage settlement, a certain property was settled to the wife and the husband successively for life, and in default of issue, to the appointees of the wife, in default to the wife's next of kin. The wife died without appointing, leaving a mother and brother. The brother, reciting the settlement, the fact of the wife's death, and the fact that the husband and mother were still

living (but only as showing their interest as life-tenants) mortgaged the entire reversionary interest which he said he was beneficially entitled to as "the sole next of kin." The mother dying, the question was whether the mortgagee could take advantage of the accretion to the son's interest.

*Held*: He could, either under the covenant for further assurance implied under the mortgage or on the broader ground that though the assignment was of a defective title, yet as the assignor afterwards acquired a good title the Court will make that good title available to make the assignment effectual.

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**Steeden v. Walden**:—[1910] 2 Ch. 393.

*Infant—Next friend—Indemnity for costs of suit.*

Upon the decisions, it is clear that an infant is liable to indemnify a person who institutes an action on his behalf as his next friend in all cases where the Court is satisfied that the litigation has been prompted by motives of benevolence towards the infant and has been conducted in his interest and with diligence and propriety. For instance, where an action was instituted under competent legal advice, the infant was held liable to make good to the next friend the costs incurred, and damages awarded for having taken a temporary unjunction though the action failed ultimately.

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## JOTTINGS AND CUTTINGS.

*The Late Mr. Justice Walton.*—The death of Mr. Justice Walton will be deplored by every member of the profession. Apart from the tragic suddenness of his end, his loss is no ordinary one. There were many exceptional features in his career which made him notable. His early training in a Jesuit school, his graduation at a modern university (his creed excluding him from the ancient seats of learning), the gradual building up of his legal reputation at a local Bar in Lancashire, his constant advocacy in the Courts and elsewhere of the claims of the Church to which he belonged—these were elements in the making of the future Judge which might not have told everywhere in his favour, but the English Bar knows no distinctions of creed or origin, and its excellent traditions overcame all

apparent disadvantages and causes of prejudice. The whole profession acclaimed his promotion to the Bench, and if he did not entirely fulfil all the high expectations roused by his appointment, he won universal respect by the intense sense of duty which he displayed in the discharge of his office. As a Judge, the very powers of refinement which had brought him so much success as an advocate led him at times to a wrong decision on disputed questions of fact; but his law was seldom at fault, and if he had lived he would have added strength to one of our tribunals of appeal. He was one of the small but growing band among our Judges who valued and encouraged the scientific study of the law as well as its practice, and his loss will be mourned by the jurists of all countries, in whose Conference he took part at the meeting of the International Law Association held in London only a few days before his lamented death—*The Law Journal.*

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*Lawyers and Longevity.*—The death of Mr. Richard Peter, of Launceston, removes not only a picturesque figure from the County Bench, but the oldest solicitor in the country. He was oldest, however, only in years, aud not in standing, for though he was born more than a hundred years ago, he was not called till 1838; whereas Mr. Janson, who was his junior, was admitted in 1835. The quiet fray of the Law Courts seems to make for longevity in both branches of the profession. Perhaps it is that the judicial temperament, which long experience in the law confers, saves the lawyer from worrying about the little things which impair the vitality of men in other ways of life. Perhaps it is that the pursuit of peace for others, which is ultimately the aim alike of the Judge, the barrister, and the solicitor, induces peace of mind in the pursuer. Certain it is that our annals show a striking record of active service in the law by men who have passed what is regarded as the allotted span of man's life. In the past, Lord Campbell did not begin his Chancellorship till he was in his eightieth year, and Vice-Chancellor Bacon continued to administer equity till he was eighty-nine. And in the present, Lord Halsbury, despite his eighty-five years, is still, as FitzJames Stephen said of Chief Baron Pollock, "a fine lively old man, straight as a ramrod, and full of indomitable vivacity." Lord Macnaghten, who has been a Lord of Appeal for twenty-three years, has still one of the acutest minds on the Bench, and

Lord James of Hereford, who was appointed Queen's Counsel more than forty years ago, still gives his wise assistance to the highest tribunal, and, among members of the other branch, the late Sir John Hollams, who died a few months ago, had known sixty-six years of continuous practice—*The Law Journal.*

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*Divorce in Foreign Countries.*—It is certainly dangerous to argue too closely from the experience of one country in divorce to the needs of another, since in nothing do differences of national character and outlook show themselves so markedly as in the demand for the disssolution of marriage. This was strikingly shown by a paper read at the International Law Conference, which proved that the grant of divorce in the United States during the last thirty years was, relatively to the population, three hundred and twenty times as common as in Canada. In the one country the stand-point of the Roman Catholic Church towards marriage, in the other the desire for unfettered individual freedom, is predominant. Nevertheless, in view of the agitation for the reform of our divorce law and its administration, it is instructive to look to the workings of the law in other States. One of the most glaring evils of our present system is that divorce is granted to the rich but practically denied to the poor. But in France, where the *in forma pauperis* procedure is readily available, it appears that during the last twenty years the number of petitioners suing in this way has more than doubled: it was two thousand in 1888, and it was over four thousand two hundred in 1908. This throws light upon the suggestion constantly made that the poor do not want divorce, even if they could get it; but what is more striking is that the increase of the marriage rate corresponds largely with an increase of divorce. When persons know that if their union is unhappy it may be dissolved, they will more readily enter into a legal marriage; deny them this opportunity, and they will resort the more readily to illegal unions. It is interesting, again, that the greater number of the working-class divorces take place shortly after marriage; this suggests that the unions were improvidently contracted and that the State would do well to supervise in some way, by the requirement of parents' consent or otherwise, the right of young persons to marry. This was a view put forward by several witnesses before the Royal Commission; and as a distinguished

American jurist has said, "it is the highest legislative unwisdom to encourage reckless marriages and to refuse relief by divorce." The English system is partly open to this reproach, and it is questionable whether we should not do well either to imitate foreign countries and recognise the nullity of a marriage of minors to which the parents have not consented, and which the parties themselves soon come to regret, or alternatively to allow a divorce by mutual consent upon the strict conditions which are imposed in Belgium in such cases—*The Law Journal.*

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*The Retirement of Mr. Justice Jelf.*—No occupant of the Bench holds a firmer place in the affections of the profession than the amiable, yet firm and virile, Judge whose retirement is now announced. His appointment, less than nine years ago after a long and strenuous career at the Bar, was hailed as a fitting tribute to his eminence as an advocate, and as an acknowledgement, notwithstanding his advanced years, of his still undiminished powers of effective work. He has striven, and, on the whole, with success, to justify the appointment, and though his term of office has been comparatively short, he leaves behind him a fine record of public service achieved by a whole-hearted and conscientious devotion to his judicial functions. General sympathy has been felt for him in the break-down of his health, and it will be the universal hope that the relief from responsibility which is now accorded him will tend to the restoration of his strength. The cordial good wishes of the whole profession will go with him in his retirement.—*Ibid.*

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*The New Judge.*—The promotion of Mr. Montague Lush, K. C., to judicial office has been long expected, and it will be generally recognised as a strengthening of the Bench. The Lord Chancellor is, indeed, happy in his selection of men fitted to carry into effect his desire for more speedy justice, and the new Judge brings to the discharge of his duties just those qualities which go to the realisation of that ideal. A consummate lawyer, quick in mind, well versed in legal authority, and thoroughly experienced in practice, he may even equal the high reputation secured by his father, the late Lord Justice Lush, of whom it was said that "he was the most perfect *Nisi Prius* Judge of his time." Thus "Amurath succeeds to Amurath," and both branches of the profession will be well satisfied with the succession,

for the new Judge's father was an attorney before he became a pleader, and proceeded by that arduous channel to the Bar.

Mr. Justice Lush, the newly appointed King's Bench Judge, is (says the *Westminister Gazette*) one of several occupants of the Bench who laid the foundations of their success by writing a law book. Early in his career at the Bar he wrote a treatise on "the Law of Husband and Wife," which has long been recognised as the standard work on its subject. Among the other legal authors on the Bench are Lord Justice Farwell, whose concise work on "Powers" first brought him into prominence at the Chancery Bar; Lord Justice Buckley, whose book on Company Law is a legal classic, and Mr. Justice Phillimore, who is well known as a writer on ecclesiastical and international law. Two other Judges have strayed in the more pleasant paths of authorship. Mr. Justice Ridley has written a translation of Lucan's "Pharsalia," and Mr. Justice Darling, the most literary of Judges, is the author of "Scintillæ Juris" and several other charming little volumes.—*The Law Journal.*

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*The Resignation of Lord Collins.*—The resignation of Lord Collins of his office of a Lord of Appeal in Ordinary, which we are in a position to announce definitely, will be received by the profession with a sincere feeling of regret. Lord Collins was appointed a Lord of Appeal less than four years ago. During the nineteen years he has been engaged in judicial work, as a King's Bench Judge, as a Lord Justice, as Master of the Rolls and as a Lord of Appeal, he has conspicuously displayed the wide knowledge of legal principles, the ready grasp of material facts, and the remarkable gift of lucid statement which won for him so distinguished a place at the Bar. He has, moreover, discharged his judicial duties with a fine sense of courtesy and pleasing touch of humour which have secured for him the intimate regard of all those who have practised before him. Like the two newly appointed Judges, Mr. Justice Eldon Bankes and Mr. Justice Lush, he bears an honoured name in legal annals. One of his ancestors, Henry Henn, was Lord Chief Baron of Ireland in the reign of Charles II; a nearer relative, Jonathan Henn, defended O'Connell at the famous State trial. We hope, in common with every member of the profession, that Lord Collins—one of many Irishmen who

have won an eminent place in the English Courts—will quickly regain his strength and long enjoy the leisure he has earned so well—*The Law Journal.*

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*Rumoured Legal Changes.*—Rumour is busy, as we go to press, with the possible changes that may follow Lord Collins' retirement. Sir William Robson will, it is said, accept the vacant Lordship of Appeal, Sir Rufus Isaacs succeed him as Attorney-General and Mr. J. A. Simon be appointed Solicitor-General. These appointments, should they be made, will be of more than ordinary interest. Sir William Robson will be, with the notable exception of Lord Russel of Killowen, who succeeded Lord Bowen in 1894, the only Attorney-General who has accepted the office of a Lord of Appeal in Ordinary since its creation in 1876. To Sir Rufus Isaacs will belong the distinction of being the first Jew to occupy the proud position of Attorney-General in England. Mr. Simon, who is but thirty seven years of age, will be the youngest Solicitor-General of modern times. The "enterprising journalists," as Sir William Robson called them in the very guarded allusion he made to these rumors at South Shields on Wednesday, have, in disposing of the Solicitor-Generalship, ignored the claims of the Chancery Bar. No Equity lawyer has been appointed a Law Officer since Sir John Rigby succeeded Lord Russel of Killowen as Attorney-General sixteen years ago—*Ibid.*

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*The New Lord of Appeal.*—The promotion of Sir William Robson to the position of a Lord of Appeal in Ordinary will add greately to the strength of our highest tribunal. During his tenure of office as Attorney-General he has rendered signal service to the popular cause in his support of labour legislation, and on another side of his duties he has established his reputation as a sound international lawyer by his success in the conduct of the British case in the Newfoundland Fisheries Arbitration at The Hague. In domestic as well as in imperial affairs, therefore, he carries with him the promise of great and valuable service in the final tribunal of Justice for all the King's subjects. He will bring also to the work of the House of Lords the experience and knowledge of a great commercial lawyer. His departure from the Bar, of which he has proved a dignified as well as a popular head, will be regretted by all his colleagues —*Ibid.*

*The New Law Officers.*—'To industry and to courage the avenues of fame and fortune are ever open.' These proud words of Sir Edward Clarke to his constituents on his appointment as Solicitor-General find a strong exemplification in the brilliant achievements which have placed Sir Rufus Isaacs, 'not propped by ancestry, not assisted by connection,' at the head of the Bar of England, and secured for Mr. J. A. Simon, the youngest of all the King's Counsel the coveted office of Solictor-General. Like Erskine, whose versatile career finds its counterpart in the early records of the new Attorney-General, Sir Rufus Isaacs owes his elevation solely to his great professional eminence. Though 'great in counsel' it cannot, at present, be said that he has acquired any large accession of fame by his Parliamentary work, His style of oratory, as was said of Erskine's, though of a high order, is not indebted for its excellence to beauty of diction, or to richness of ornament, or to felicity of illustration—it is from its unrivalled vigour, directness, and sense of conviction that it derives all its force. He has won his way to the acknowledged headship of the profession—even before he became its official leader—by combining the most zealous and industrious advocacy with that scrupulous and delicate sense of honour which is the pride of the Bar of England. He receives his great dignity with the good wishes and congratulations of all his contemporaries; for it is felt that he worthily fulfils all the high traditions of the Bar, and that its reputation is secure in his hands. There was never a more popular appointment to a Law Officership than that of Simon, K.C. His career has, indeed, been as rapid as it has been brilliant, but every one who has been brought into contact with him in the Courts in Chambers or in Hall has seen that, notwithstanding his great modesty, his course was surely directed towards the goal of all legal ambitions—Woolsack.—*The Law Journal.*

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*The Lord-Chancellorship.*—The promotion of Sir Rufus Isaacs to the office of Attorney-General puts him in the line of heirs-presumptive to the Lord-Chancellorship, and the quidnuncs that have been busy with possible difficulties about the succession because of the vulgar notion that 'that most sacred fortalice of the Constitution, that inner sactuary and holy of holies,' is closed to subjects of the King professing the Jewish

religion. There is no foundation now for this idea, for the old statutory provisions excluding Jews from certain high offices of State, including those of Lord-Chancellor and Lord-Lieutenant of Ireland, were repealed by the Promissory Oaths Act of 1871, and there is nothing in the Common Law to justify such an exception to the general rule that 'every subject of the King is presumably entitled to hold every office under the Crown' Sir John Duke Coleridge, as Attorney-General, was of the same opinion when questioned on the subject in the House of Commons in 1872, and he reaffirmed the same view judicially as Lord Chief Justice in his well-known charge to the Jury in *Regina* v. *Ramsay Foote* [1883]. In his famous speech on the Religious Disabilities Bill of 1891 Mr. Gladstone laid down that 'the principles of theBritish constitution admit and allow of no civil disabilities on account of religions opinion,' and he went on to accentuate the grievances of Roman Catholics, for whose relief the Bill was introduced, by emphasising the fact that under the Constitution there was no obstacle to the holding of the office of Lord Chancellor by a Jew, by a Mahomedan, by a Budhist or by a Hindu. These statements were never challenged in the course of the debate in which the present Lord Chief Justice (then Attorney-General) took part, and there can be no question now that, except as to Roman Catholics because of special statutory provisions, there is no such disqualification. The only objection of substance which has ever been raised to the possibility of there being a Jewish Lord Chancellor is the possession by the holder of this office of great ecclesiastical patronage. But the objection fails entirely because the Act which removed the other disabilities of Jews expressly provided that "where any right of presentation to any ecclesiastical benefice shall belong to any office in the gift or appointment of Her Majesty, and such office shall be held by a person professing the Jewish religion, the right of presentation shall devolve upon and be exercised by the Archbishop of Canterbury for the time being" (21 & 22 Vict. C. 49, S. 4). And this section of the Act is still in force. The Lord Chancellor is not the only great officer of State who exercises ecclesiastical patronage, and even as to Roman Catholics, for whom there is no such express statutory provision, the difficulty was got over by a Conservative Government on its

appointment of Mr. Henry Mathews (now Lord Llandaff) as Home Secretary;by his ecclesiastical patronage being exercised by Lord Salisbury, then Premier.—*The Law Journal.*

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*The "Keeper of the King's Conscience."*—The association of ecclesiastical patronage with the Chancellorship has undoubtedly had a great deal to do with the survival of the idea, long after the cause for it had disappeared, that the Lord Chancellor is, somehow, the "Keeper of the King's Conscience." That may have been literally true in those early times when the Chancellor was the head of the King's chapels and, in virtue of that office, private confessor to the King. But even before the Reformation the Chancellorship had passed into the hands of the Archbishop of Canterbury, who had no such personal relation to the monarch, and had ceased to be "Keeper of the King's Conscience." From the time of Henry VIII to that of George III nothing was heard of the doctrine, and it was then only revived because, it was said, of the desire of the King to set up some other authority to control his masterful Prime Minister who said, "the Queen's conscience may be kept by a Jew (when the patronage is exercised by the Archbishop of Canterbury), by a Nonconformist (bound by his principles to look upon the Established Church with dislike, and yet entitled to present to each living as it becomes vacant), or by an agnostic." The principle, if there is any, which would exclude the new Attorney-General from the Chancellorship because of his religious belief on which our Constitution now rests, are opposed to the ideas of exclusion involved in the maintenance of this figment of the guardianship of the "King's Conscience." The State, in selecting men for its service, has no concern with their religious opinions. And as to the Bar, there is no better guide than the fine peroration of Gladstone to his speech in the Commons: "In that noble profession—the Bar of this country—every man rises by free and open and unbiassed and glorious competition. It is a grand thing, morally as well as socially, for a man to rise and become the head of the English Bar, and is it worthy of you and of your traditions when a man has arrived at such a position, and when the prize is his by every principle of right, to say to him, 'pass onwards, you are disabled from filling the Chancellorship.' ".—*Ibid.*

*The Camera in Court.*—Those who have a proper regard for the dignity of the administration of Justice may venture to hope that, among other matters, probably more important, discussed by the King's Bench Judges at their customary meeting at the commencement of the Michaelmas Sittings, the question of the abuse of photography in connection with legal proceedings received the attention for which it calls. The reproduction of the portraits of the parties and witnesses in sensational trials has lately developed into a serious evil and the Judges owe it to the prestige of the tribunals over which they preside to make it definitely known that the practice must be stopped. Sir Albert de Rutzen, during the preliminary stages of the Crippen case at the Bow Street Police Court, prohibited the taking of portraits of the witnesses, but this prohibition did not prevent the publication of photographs of the accused persons in the dock. We hope that when the Crippen trial begins at the Central Criminal Court on Tuesday the presiding Judge will wholly prohibit the use of the camera in the Court. If it is improper that a witness should, against his will, have his portrait printed in a public journal, it is still more objectionable—and this is a statement which may be confidently made without any particular reference to "Dr." Crippen or Miss Le Neve—that an accused person who may be found to be innocent, should have his or her attitude in the dock perpetuated by illustrations in the Press. The vulgar enterprise of the 'snapshot' journalist has recently caused the Jockey Club to prohibit the use of the camera in the enclosures at race meetings under its control. Surely it never shall be said that the Judges of the High Court are less regardful of the dignity of the Courts of Justice than are the Stewards of the Jockey Club of the amenities of the regions over which they preside.—*The Law Journal.*

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*Savarkar's case and the Right of Asylum.*—The case of Savarkar, the Indian student, is likely to go down to history as a judicial romance, as well as a leading case. It will be remembered that early in the year a warrant was obtained under the Fugitive Offenders Act for his deportation to India to stand his trial there for complicity in the murder of Mr. Jackson, the Indian Civil Servant who was shot at Nasik, and for attempting to wage war against the King. A rule *nisi* for a writ of *habeas corpus* was then granted

to him to test the legality of the deportation, but, after long argument before the Divisional Court and the Court of Appeal, the rule was discharged and the order was made for his delivery up to the Indian Government. In July he was placed in custody on board the P. & O. Liner *Morea*, which touched at the port of Marseilles on its journey. While the vessel lay in the harbour, Savarkar escaped through the port hole of a bath-room and swam to the shore and was seized by a French gendarme and handed over straightway. Whatever be the true version, Savarkar was brought back to the ship, taken to India, and is now standing his trial with the other persons involved in the same conspiracy.

The French Government has claimed that, having touched French soil, he ought not to have been restored to British custody until his extradition had been granted; and that, as the offence with which he is charged is political, he would not have been liable to surrender. The two Powers, after considerable diplomatic negotiation, have agreed that the determination of the legality of his arrest on French soil shall be submitted to the International Arbitration Tribunal at The Hague, and that no sentence shall be carried out upon him till the decision of that tribunal has been given.

The position of a prisoner committed for trial abroad upon a vessel which touches at a foreign port is not quite clear. If he is upon a public or State vessel his detention could certainly not be questioned in the foreign country, because such a vessel is regarded as being a floating part of the nation's territory over which the national jurisdiction is exclusive. Accordingly during the Crimean War the United States Government held that its Courts had no power to issue a writ of *habeas corpus* to bring up the bodies of certain Russian prisoners on board an English prize vessel which had touched at San Francisco (the case of the *Sitka*.) But this doctrine would not, it is apprehended, apply to a private passenger or private vessel, and it has been held in England that *habeas corpus* would lie to test the legality of the detention of prisoners in custody under a Canadian warrant who had been brought into an English port by such a ship—cf. *The Canadian Prisoner's Case* (1839) and *London's Case* (1896) 31 L. J. 252. In the first case the Canadian prisoners were on their way to deportation to Tasmania and their detention was held illegal here; in

the second, a German subject, who had been extradited from Canada, was brought into Liverpool, and it was found necessary to issue a fresh warrant for his extradition from England to Germany. Our Mail Ships Act of 1891 (54 & 55 Vict., C. 31, S. 4) makes certain provisions limiting the powers of execution of process on Foreign Mail vessels in British ports, and although there does not seem to be any convention with France under this Act, it appears that in Savarkar's case the British Government had informed the French authorities of his presence upon the Mail steamer which was due to put in at Marseilles, and that no objection had been raised, so that the English warrant was good by consent while he was on board.

It is urged that Savarkar's escape to the shore altered the situation, and that once he had touched French soil he enjoyed the right of asylum and could not be removed without extradition proceedings. The right of asylum, however, is not a right of a foreign criminal to demand that the State whose territory he has entered should grant him protection. The State may or may not grant him protection, but it certainly is not bound to receive every runaway criminal who escapes from custody and give him shelter. It may be submitted, then, that Savarkar never obtained asylum in France. The French gendarme, according to the English version, seized him and gave him immediately he reached the shore, and the right of asylum was not claimed for him till some days after he had left the port. If the French officer of the law refused to admit him into the country his position was no better than that of an alien emigrant who is rejected at one of our ports on the ground that he is a criminal and who certainly could not claim that he had obtained an asylum here.

If, however, as Savarkar's own story has it, he was arrested on French soil by English detectives, the position would be more complicated. Such an arrest would be illegal and it might then be urged that it was open to France to claim for him the asylum of which he had illegally been deprived. Hence it will be an important question of fact for the Hague Court to decide how the arrest at Marseilles was made.

Supposing, however, that the Court holds an asylum in France to have been obtained, it will have next to determine

whether Savarkar was charged with an offence extraditable under the treaty between England and France. It is, of course, urged on his behalf that the charge was for a political crime; and both by International Law and by the special terms of the Extradition Treaty of 1876 between the two Powers there can be no extradition of Political Criminals. The treaty provides (Article XI) that a person charged with a crime connected with a political offence shall not be surrendered, and it is represented that Savarkar's alleged complicity in the murder of Mr. Jackson is a crime of that character. There has been much dispute as to what constitutes a political crime and the difficulty is greatest in so-called 'relative political crimes' (*delicti implices*) where the political offence comprises an ordinary crime such as murder. The practice of nations varies as much as the opinion of jurists upon the question and likewise as to the proper body to determine the matter in a particular case. In England, for example, all affairs connected with extradition are decided by the Judiciary, in France by the Executive. In England, again, the test of a political offence is, whether it is incidental to or part of a political disturbance. (Cf. *In re Castroni* [L. R. (1891) 1 Q. B. 497] and *In re Munier* [L. R. (1894) 2 Q. B. 410]).

It may be urged in support of the English claim for Savarkar's surrender that there was no political disturbance in India at the time that he incited murder, so that the charge against him on this account—and it is the main part of the charge—is not properly for a political crime. In France, however, the determination of that question would be purely a matter for the discretion of the Executive. The International Court will confer great service not only upon the parties immediately interested in the arbitration, but on all the Powers, if it defines what is to be regarded as a political offence. The decision of such a tribunal would certainly have weight and might become part of the accepted law of nations. Hitherto England and France have taken a particularly liberal view of the exemption of political criminals from extradition. It was through their refusal to take part that an International Conference which Russia desired to call in 1881, to consider a proposal that murder or attempt to murder should not be considered a political crime, did not actually take place. The International

Tribunal would, however, presumably consider the case not exclusively from the point of view of the two submitting Powers but from the general stand-point of civilised nations.—*The Law Journal.*

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*Decision of a Question of Judicial Precedence.*—A question had arisen whether Mr Justice Avory and Mr. Justice Horridge took precedence of Mr. Justice Bankes under the following circumstances: The two learned Judges were announced in the beginning of August, their appointment to take effect on October 1 under the Special Act of this year. A few days after this announcement Mr. Justice Walton died, and his successor was announced in September without any qualification, as it was an ordinary vacancy. It was decided that Mr. Justice Bankes took precedence in these circumstances, and the Letters Patent were dated accordingly—*Ibid.*

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*Re-election on Acceptance of Office.*—Without approving, in the existing state of the law, of all the uncomplimentary epithets that have been applied to the opposition to the return of Sir John Simon in the Walthamstow Division, we share the widely expressed view that Parliament ought speedily to consider the repeal of the old statute which compels the Solicitor-General, on being appointed to a high legal office, within only nine months of his last election to seek again the support of his constituents. It appears to have been overlooked, in the discussion of the statute to which the opposition to Sir John Simon has given rise, that the King's speech of 1904, when Mr. Balfour was in office, proposed the removal, after the termination of the then existing Parliament, of the necessity for re-election in the case of acceptance of office by members of the House of Commons. Nothing was done, unfortunately, to carry the proposal into effect, and the exact proposals of Mr. Balfour's Government never became known. The absurdity of the Act of Queen Anne is, of course, most apparent when a new Ministry is formed after a general election. It is always known in regard to certain politicians of distinction that they will become members of the Government if their party is successful at the polls, and it is quite obvious that a newly appointed Minister who has again to fight for his seat cannot meanwhile attend to the important duties committed to his charge. The only ground on which the

existing law can be defended is that a member of Parliament who is appointed to an office some considerable time after his election may have forfeited the confidence of the electors. This, however, is an argument not for upholding the law as it stands, but for altering it. If it be deemed desirable that the appointment of such a member should be confirmed by his constituents, it could be enacted that the necessity for re-election should exist only where the member accepts an office of profit under the Crown after, say, an interval of two years since his election. In the case of a Recorder the existing rule ought to be abolished in its entirety. It is absurd and mischievous that a Member of Parliament who accepts a Recordership should be required to submit himself to his constituents abroad because the duties of the office are purely judicial, and mischievous because it limits the Home Secretary's choice. The inhabitants of one town may, as things are, be deprived of the services of the man most competent to act as their Recorder merely because the electors of another town have not given him a sufficiently large margin of votes.—*The Law Journal.*

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*The Recognition of New Governments.*—The Government of a State is, in the eyes of International Law, quite distinct from the *persona* of the State, so that a change of Government does not alter the relations of a State to its neighbours. Even a complete change of the Constitution, such as has recently taken place in Portugal, where a Monarchy has given way to a Republic, does not affect its international position. The old treaties remain in force, the old obligations to other countries remain, and the old ambassadors remain accredited. The rule, however, is subject to an exception in practice—that Foreign States regularly wait some time before they give a formal recognition of the change of Government. There is always a chance that the revolution will be followed by a counter-revolution and that the new arrangements entered into with the revolutionary administration will be nullified by the subsequent restoration of old powers. Hence as a matter of expediency, official recognition is held over till the new constitution has acquired a certain stability. In the meantime the necessary diplomatic intercourse is conducted with the act of Government, which is treated as a *de facto* sovereign, and, as soon as it is deemed safe, is openly accepted as the representative

of the State. There is naturally no fixed period for determining that time ; it depends upon the special circumstances of each case, and the Great Powers usually continue to act together in taking the step. Where one part of a State is in insurrection against another, the *de facto* recognition of its independent entity may be a serious step for a foreign Power to take, as was the case when Great Britain issued a declaration of neutrality in the American Civil War. But where the government remains undivided, though in a new form, *de facto* recognition can give no offence to the ousted Sovereign since it is obviously required in the interests of the State.—*The Law Journal.*

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*The State's Liability for Riots and Strikes.*—The recent unrest in France and Portugal draws attention to the question of the liability of a State towards the subjects of a Foreign Power for damage caused to them or their property by rioters or strikers. Some international jurists have claimed that there is a legal obligation upon the State to make good any loss incurred to foreign residents by its own citizens if the offenders themselves are unable to make reparation. The better opinion, however, seems to be that at present no such obligation is established, and if a State chooses to indemnify foreigners who have suffered from its internal disorders it does so as an act of courtsey or benevolence. A State is, indeed, bound to indemnify persons subject to a Foreign Power for injuries casued by any of its own officers or servants; it has a vicarious responsibility for all their actions. But the limit of its responsibility for the actions of private citizens is that it should extend to foreigners the same facilities as it grants to its own subjects for obtaining relief before the Courts of the land for any damage caused. If it fails to do this, the Foreign Power has the right to interfere on behalf of its citizens by diplomatic representations, by reprisals, and, if necessary, by force. The famous example of such action by the English Government is the case of *Don Pacifico*, when Lord Palmerston ordered a blockade of the ports of Greece to secure reparation for damage done by rioters to the property of a protected British subject. But, provided that the foreign resident has the same opportunity of getting satisfaction as the native, the State is not liable because the offenders prove unable to make good the losses. By the Municipal Law of France the

losses caused the citizens by strikes and riots are made a liability of the communes and counties where they take place, and an English subject would, therefore, have the right to proceed against the local authority for losses caused by him by the recent strike, but in other countries no such communal responsibility obtains, and Spain, for example, has so far not acceded to the demands of foreign residents that the Government should compensate them for the serious damage which they incurred in the Barcelona Riots of 1909. The tendency, however, is growing for States to recognise the public liability for the actions of its revolutionaries, and it is probable that the liability will ripen in time into a legal obligation ; but English law at present knows no State responsibility of the kind.—*The Law Journal.*

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*Sketches in Court.*—The strong protests which have been made against the sketching and photographing of prisoners and witnesses in Criminal Courts have, we are glad to observe, not been ineffectual. Mr. Justice Scrutton, on having his attention directed at the Central Criminal Court on Monday to a newspaper artist sketching a prisoner in the dock, said: "Neither sketches, photographs, nor anything of the sort should be taken in Court, and if, after what I say, any one sketches, there is such a place as Holloway. If any person has made a sketch I advise him not to publish in a newspaper after what I have said." It would seem, however, that the High Court Judges have not yet agreed to suppress an evil which is threatening to impair the dignity of the administration of Justice. The Lord Chief Justice did not deem it necessary, at the opening of the Crippen trial on Tuesday, to formally prohibit the taking of portraits in the Court, with the result that the sketches of the accused in the dock and of several of the witnesses were printed in at least one half-penny Journal the following day. It is, to say the least, anomalous that sketching should be sternly prohibited in one Court at the Old Bailey and passively allowed in another.—*Ibid.*

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*Sir Rufus Isaacs'*—first appearance in wig and gown, (so says the *Westminster Gazette*), he told a company of law-students not long after he became a K. C., was in a County Court case in which he represented a fruit merchant who was being sued by a costermonger. The costermonger, who alleged that

some boxes of figs he had purchased were unfit for human food, grew angry under Mr. Isaac's cross-examination. "Look you ere, Guv'nor," he exclaimed, "some of these ere figs is in this Court, and if you eat three of 'em and ain't ill in five minutes, I'll give up the bloomin' case." The County Court Judge thought that Mr. Isaacs ought to make the experiment, but the young advocate, resourceful then as now, suggested that it would be more fitting for his client to accept the challenge: "What will happen if I don't eat the figs?" whispered the fruit merchant. The future Attorney-General told him that judgment would probably be given against him. "Then I'll lose the case," was the unhesitating reply.—*The Law Journal.*

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*Miscellany.*—The King has been pleased by Letters Patent under the Great Seal dated the 13th instant to grant to Lord Collins, late a Lord of Appeal in Ordinary, an annuity of £3,500 commencing from the 7th instant inclusive, and to Sir Authur Richard Jelf, late one of the Justices of His Majesty's High Court of Justice, an annuity of £3,500, commencing from the 6th instant inclusive.

Sir William Robson who has been appointed a Lord of Appeal in Ordinary has been granted by the King the dignity of a Baron for life, by the style and title of Baron Robson of Jesmond in the County of Northumberland.

A case is before the House of Lords which has made a record in the annals of litigation. The trial of *Wyler & others* v. *Lewis & others*, which resulted in £67,472 damages being awarded to the plaintiff, occupied Mr. Justice Phillimore and a special jury 33 days in the year 1908, and an appea by the defendants, who unsuccessfully applied for a new trial, consumed eighteen days more in the Court of Appeal. The total cost was said to be £80,000. Mr. Rufus Isaacs, K. C., Sir Edward Karson, K. C., Mr. Eldon Bankes, K. C., and Mr. Montague Lush, K. C., were among the leaders engaged in the case. It is a somewhat notable circumstance that of these counsel one is now Attorney-General and two others are King's Bench Judges.

At the Bloomsbury County Court, on Monday, a young typist appeared before Judge Bacon wearing a hat of more than

ordinary size. When she stood in the witness-box His Honour said: " Tip your hat back," but the witness could not tilt it sufficiently for the Judge, who said, " I cannot see your eyes, and there are the windows of a soul in a case like this." The witness then made another attempt and asked " Will that do ?" Judge Bacon : " No. It will not. There is a dark shadow across your features and your eyes are hidden." The witness : "I cannot tip it back any further." Judge Bacon: "It can go further back. I think you are a most obstinate young woman." The witness: "I think I will take the hat off." Judge Bacon : " No, you will not. I will not have a woman with her head bare in Court. She must not appear here with her head bare any more than in church." At last the hat was tilted sufficiently, and the witness gave her evidence, which was merely the answering of one or two questions.

The recent appointments (says the *Daily Telegraph*) suggest an inquiry into the question: "What becomes of Attorney-Generals and Solicitor-Generals ?" An examination of the records for the past century discloses the fact that during 100 years there have been (including Sir Rufas Isaacs and Sir Robert Findlay) 39 Attorney-Generals, the career of each having thus lasted on an average something under three years. Of these Sir John Lawson Walton, Lord James of Hereford, Sir John Karslake, Sir William Follett, Sir William Atherton, and Sir Charles Wetherell never held judicial office, and Sir William Horne had to rest content with the humble dignity of a Mastership in Chancery. Eight of them ultimately climbed to the Woolsack—Lords Loreburn, Cairns, Selborne, Westbury, Chelmsford, Truro, Campbell and Lyndhurst. Chief Justiceships were secured by Lord Alverstone, Lord Russell of Killowen, Lord Coleridge, Sir Alexander Cockburn, Sir John Jervis, Lord Denman and Sir Vicary Gibbs. The chief Barons of the Exchequer were Sir Fitzroy Kelley, Sir Frederick Pollock and Lord Abinger. Lord Romilly, Lord Gifford and Sir Thomas Plumer became Masters of the Rolls. Sir J. Rigby, Sir J. Holker, Sir R. Baggallay and Sir J. Rost were Lords Justices. Sir Robert Collier, after his brief qualifying experience as a Judge of the Court of Common Pleas, and Lord Lyndhurst had been Chief Justices of the Common Pleas; and Lord Lyndhurst had been

Chief Baron of the Exchequer and Master of the Rolls. Some of those who never became Lord Chancellors also held more than one high position. Sir Vicary Gibbs, for instance, was C. P., as well as C. J., C. P.; and Lord Gifford, besides being M. R., was also Chief Justice of the Common Pleas.—*The Law Journal.*

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AMERICAN CASES.—*Carriers of Passengers—Duty to make change on tender of fare.*—In an interesting case in Georgia an electric railroad company, operating a street railroad system in the City of Atlanta, had a rule requiring conductors to make change to the amount of two dollars, but not to furnish change for a greater amount on tender by passengers for payment of fare[1]. Plaintiff and a couple of companions boarded one of defendant's cars, and tendered to the conductor a five-dollar gold piece, with request that all three fares should be taken therefrom. The tender was refused, and none of the trio having any smaller denomination of money, all were ejected. Plaintiff sued for damages, claiming that five dollars was a reasonable amount to tender in payment of car fare, but the Trial Court, maintaining an opposite view, directed a verdict for defendant. On appeal to the Georgia Supreme Court the judgment was sustained, the Court saying, that to require conductors to make change for five dollars for every passenger would so delay the progress of cars as to inconvenience the travelling public, and impose an unnecessary burden on the street rail-road company.—*The American Law Review.*

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*Contract by physician with patient for medical attendance during life—Public policy.*—In a recent case in Illinois the plaintiff had contracted with an aged woman-patient to furnish her with such medical attendance as should be required during her life time for $100,000 payable in ten annual instalments after her death. The Probate Court refusing to allow the claim, and an appeal being taken to the Supreme Court, the latter[2] held such a contract not against public policy, and said: "It cannot be seriously contended but that in order to comply with the terms of this contract and be entitled to receive the benefits of it, the appellant was bound to give Mrs. McVilker the best treatment

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1. Binge V. R. Co., 65 S. E. 879.
2. Ziegler V. III. Trust Co., *Ahic. Leg. News* May 7, 1910.

within his power and skill and to prolong her life as long as possible. Should he fail to do this, either through neglect, by willfully treating her in an improper manner, or by directly causing her death, appellant would be unable to recover upon the contract. There can be no doubt a contract to commit murder or any other crimes is void, as against public policy. This contract does not contemplate the commission of a crime or the doing of anything which is unlawful or contrary to good public morals.—*The American Law Review.*

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*Freedom of religious worship—Compulsory attendance at worship in public schools.*—The Supreme Court of Illinois has decided that the section of the State Constitution guaranteeing "the free exercise and enjoyment of religious profession and worship, without discrimination", includes freedom from being compelled to join in any religious worship. That the reading of the Bible in public schools, the singing of hymns and repeating of the Lord's Prayer in concert, during which time the pupils are required to rise, bow their heads and fold their hands, constitute worship within the meaning of the Constitution, and pupils cannot be compelled to join therein against their own or their parents' wishes.

The Court otherwise rules that the other constitutional provision forbidding the use of public school funds in aid of any sectarian purpose is prohibition of the giving of a sectarian instruction in the public schools and that the reading of the Bible in the public schools constitutes the giving of sectarian instruction within the meaning of the constitution. The question has come before the Courts of the other States, but had never been directly passed on by the Supreme Court of Illinois. In *Milliar* v. *Board of Education*[1] it appeared that the *Angelus* Prayer used in Roman Catholic churches was said by teachers and pupils when school closed at noon. It did not appear to be required of by anybody, but, so far as appeared, it was by a voluntary understanding between the teachers and scholars to which no scholar or parent objected, and it did not appear that the complainant had any children attending the school. It was held that no rights of the complainant were

1. 121 Ill. 297.

shown to be violated. In *North* v. *Trustees of the University of Illinois*,[1] it was held that a rule of the university requiring students to attend chapel exercises, unless excused for good cause, was not violation of the constitution. It has been held that the temporary use of a school house for religious meeting is not forbidden by Constitution.[2] In *McCormick* v. *Burt*[3] it was held that school directors, acting in good faith and not maliciously, are not answerable in damages for the expulsion of a pupil for refusing to observe a rule requiring all pupils to lay aside their books and remain quiet duringthe opening exercises, which consisted in reading a chapter from the King James Translation of the Bible. School directors are vested with discretion in determining what rules will best promote the good order and the well being of the school, and though they may err as to their powers and duties under the law or as to the facts submitted to them, they are not liable to a suit for damages for their mistakes honestly made but only for malicious acts.

"But these decisions" said the Court in the case under discussion, " have little or no bearing on the question here. In our judgment, the exercises mentioned in the petition constitute religious worship and the reading of the Bible in the school constitutes sectarian instruction".— *The American Law Review.*

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*A Cancer Hospital a Nuisance.*—In *Stotler* v. *Rochelle* a hospital for the treatment of cancer was about to be established in Kansas City, Ken., in a building formerly used as a dwelling house. The owner and occupant of the adjacent premises brought an action to injoin its establishment upon the ground that in view of the character of the neighbourhood its presence there would render it in legal contemplation a nuisance. A permanant injunction was granted, which was affirmed by the Supreme Court. For the plaintiff there was evidence that the hospital would cause a depreciation in the value of plaintiff's property ; that there would be some danger of communication of the disease through transmission by means of insects, and perhaps in other ways, and that offensive odors resulting from disinfectants used on account of it might reach the occupants of neighbouring dwellings. The

1. 137 Ill, 296. 2. *Nickol* v. *School Directors* 63, Ill. 61.
3. 95, Ill. 263.

Supreme Court took notice of the prevailing opinion of the medical profession on the second point, saying :

" A hospital is not a nuisance *per se*, or even *prima facie* ; but it may be so located and conducted as to be a nuisance to people living close to it. The question was not whether the establishment of the hospital would place the occupants of the adjacent dwellings in actual danger of infection, but whether they would have reasonable ground to fear such a result, and whether, in view of the general dread inspired by the disease, the reasonable enjoyment of their property would not be materially interfered with by the bringing together of a considerable number of cancer patients in this place. However carefully the hospital might be conducted, and however worthy the institution might be, its mere presence, which would necessarily be manifested in various ways, would make the neighbourhood less desirable for residence purposes, not to the over-sensitive alone, but to persons of normal sensibilities. Upon these considerations the injunction was rightfully granted. The plaintiff, as the owner and occupant of adjacent property, had such a peculiar interest in the relief sought as to enable him to maintain the action."

From the current literature of the subject, it appears that while it has not been proved to the satisfaction of the profession generally that cancer can be communicated from one individual to another, except by the process of grafting or transplanting cancerous tissue, competent investigators are not lacking who believe that it is of parasitic origin and in some degree infectious. That theory is presented and argued at length in an address published in the *Lancet* of January 11, 1908, to which is appended a bibiliographical note. Results of experiments tending to support the theory are recorded in the issues of June 5, 1909, and April 9, 1910. An article in the same publication (December 4, 1909, pp. 1709-1711) describes observations made in Paris covering a period of two years and a half, which lend color to the popular belief in the existence of 'cancer houses'; that is, houses the occupants of which are peculiarly subject to cancer. In the present state of accurate knowledge on the subject, it is quite within the bounds to say that, whether or not there is actual danger of the transmission of the disease under the conditions

stated, the fear of it is not entirely unreasonable.—*The American Law Review.*

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*A Jury-man's Experience.*—"You read in the papers a good deal about what the lawyers say as to 'impressions' on the jury" said Uncle Ebe. "I want to say this: The jury is generally with the fellow who is the most frank and honest about putting his case. When it sees a lawyer struggling with all his might to keep something from coming before the jury—claiming it ain't legal evidence—the jury gets curious to know what it was, and thinks he's trying to hide something he's afraid of. The jury can tell awful quick when a lawyer acts smart and tries to bamboozle a witness, and it sympathizes with the witness. I have been on cases where the jury would have found one way, but was made to switch around on the other side just because of what had seemed to it to be unfair dealing at the trial.

"Lots of folks think a jury swallows all those" high fallutin' orations of the lawyers. That's where they got another guess. We know what all that talk means and if there ain't logic mixed up with it it don't go. Here's a thing that ought to be brought out. The courts ought to encourage jurymen in the asking of questions. Sometimes the lawyers ask their questions in such a roundabout way that you can't tell what the answer really means. I once heard a lawyer ask a witness what he knew about Mr. So-and so's character for running after bad women. The witness said: 'I never knew anything to the contrary,' and the lawyer let it go at that. In the jury room there was a free-forall fight as to whether the witness said Mr. So-and-so ran after women or not."—*The Green Bag.*

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*A Story of Chief Justice Fuller.*—A number of years before the late Chief Justice Melville W. Fuller was appointed to the United States Supreme Court, he presided, a the request of a Chicago Coroner, at an inquest at which one of the jurors, after the usual swearing in, arose and pompously objected against service, alleging that he was the general manager of an important concern and was wasting valuable time by sitting as a juror at an inquest.

Judge Fuller, turning to the clerk, said: 'Mr. Simson, kindly hand me *Jervis*, the authority on juries.'

After consulting the book a moment, he turned to the unwilling juror:—

"Upon reference to 'Jervis' I find, sir, that no persons are exempt from service as jurors except idiots, imbeciles and lunatics. Now under which heading do you claim exemption?"—*The Green Bag.*

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*An Absent-Minded Magistrate.*—Judge Gaynor related a little anecdote while lying at the hospital, after the dastardly attempt on his life, which proved that the Mayor was cognizant of certain evils and not at all adverse to giving them publicity.

"I knew a man over my way," said the Judge with a smile, "who had formerly been a bar-tender. Going into politics he was elected a Police—Justice. With some dread he heard his first case. Mary McMannis was up before him for drunkenness. The ex-bar-tender looked at her for a moment, and then said, sternly:—

"Well, what are you here for?"

"If yer please' yer Honor," said Mary, the copper beyant pulled me in, sayin' I was drunk. An' I doan't drink, yer Honor; I doan't drink."

"All right" said the Justice, absent-mindedly, "all right, have a cigar."—*Ibid.*

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*Right of persons at public entertainments—Ticket only a license*—In a recent case in the District of Columbia, a person who had bought and paid for a ticket and badge for admission to a race-course was refused admission by the gate-keeper under instructions from the managers of the course. In an action for damages the Supreme Court of the District of Columbia decided that in the absence of an unlawful assault or false imprisonment, an action of tort will not lie for the mere refusal to admit the purchaser of a ticket to the premises; and the only remedy of the holder of the ticket is an action for breach of the contract entitling him to recover the amount paid for the ticket and the necessary expenses incurred in attending the performance. Van Orsdel, J., says:

The rule as to places of amusement is entirely different from that of utilities chartered and created by law for the accomoda-tion and benefit of the public. For example, it is undoubtedly true that any one presenting himself for transportation on a rail-way train is entitled, upon paying his fare, to be carried, unless there is something in his conduct when he presents himself which justifies his exclusion. On the other hand, theatres, race tracks, circuses, private parks and places of amusement and entertainment, in the absence of some statutory regulation or restriction as to the manner in which such private enterprises shall be conducted, are entirely under the control of the pro-prietor or manager, and he may exclude or admit whom-soever he chooses. The right given by the purchase of a ticket of admission to enter such places is a mere license that may be revoked at the will of the proprietor or his agents. The reason for granting such wide latitude is manifest. Any one, however acceptable, may purchase a ticket and deliver it to one most objectionable, whose presence would not only be a reflection upon the respectability of the place, but work great injury and loss to the owner by driving away desirable patro-nage. The law imposes no duty upon the proprietor as to whom he shall give or refuse admission. It presumes that his own interest will assure proper treatment to those whom he may invite by advertisement or otherwise to his place of entertain-ment or amusement, but there is no rule for his guidance except his own judgment and sense of propriety. He may exclude one because he is objectionable to the patrons of his place ; he may deny another admission because his dress or personal appear-ance is such as to attract attention from the performance, or interfere with its progress in the manner he desires to have it conducted, and he may refuse another, as in the present case, because of alleged objectionable conduct on a former occasion. All these matters are exclusively within the control of the pro-prietor, and when he revokes the license granted by the sale of the ticket the ticket-holder's only remedy is for breach of the contract, which would entitle him to recover the amount paid for the ticket and the necessary expenses incurred in attending the performance.

It is intimated in the decisions of some of the Courts that a distinction may, exist, for example, as to theatrical tickets,

between a case where the license is revoked before the holder takes the seat called for by the ticket and where he is given notice of revocation and ejected after he has occupied the seat.—*American Law Review.*

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*The Evidence of a Parrot.*—In a case before the Divorce Court of Silesia, according to a Paris paper, an unusual question arose. A husband sought divorce from his wife on the ground of unfaithfulness. He had no evidence in the ordinary sense, documentary or parol. His one and only witness was his parrot. The husband had been away for six weeks, and, when he returned, the parrot was constantly saying: "Arthur, my dear Arthur." Then in a louder tone: 'My sweet, my heart, my loved one.' The parrot was so persistent that the husband brought his petition, making a close friend, whose name was Arthur, the co-respondent. The husband's counsel demanded the receivability of the parrot's evidence, but counsel for the wife maintained that only a person could be called as a witness. While the debate was in progress the wife confessed, so the Court was not called upon to give a ruling as to whether a parrot was or was not a competent witness.—*Ibid.*

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*Interruption of Counsel.*—A recent critic of the Bench attributed some portion of the law's delay to the greater length of the decisions of the Judges. Mr. Justice Ridley—who, the other day, adopted the extraordinary course of threatening to leave the Bench if a member of the Bar who had been engaged but half an hour in opening the defendant's case did not at once call his witnesses—has retaliated by asserting that "a great deal" of the delay in the King's Bench Courts is "caused by the length of counsel's speeches," which, he added, were "now much longer than when he was at the Bar." We doubt very much, notwithstanding the greater complexity of litigation, whether Counsel's speeches, as a whole, are more verbose than they were. In the biography of Lord Chief Justice North it is written: "He was careful to keep down repetition, to which the Counsel, one after another, are very propense: and, in speaking to the Jury on the same matter over and over again, the waste of time would be so great that, if the Judge gave way to it, there would scarce be an end, for most of the talk was not so much for the causes as for their own sakes, to get credit in the county for notable talkers.

And his Lordship often told them that their confused harangues disturbed the order of his thoughts." Even Mr. Justice Ridley would, we imagine, hesitate to speak of the present members of the Bar in such sweeping terms as these. A practice which undoubtedly has become more common is the interruption of Counsel. "If Judges," Lord Halsbury once said, "would only appreciate what an invaluable assistance it is to their minds to listen to those who have prepared their arguments, and are perfectly familiar with the facts, they would recognize that initial listening, at all events, is most desirable." Lord Halsbury is not alone in perceiving how disadvantageous the interruption of Counsel may be. "A garrulous Judge," Lord Alverstone took occasion to observe not long ago, "is an intolerable nuisance, because he lengthens the proceedings and diverts attention from the points in the mind of the advocate." To threaten to leave the Court if an advocate does not bring a speech of half an hour's duration to a close is certainly not the most agreeable way of assisting him in the performance of his duty to the Court, as well as to his client.—*The Canadian Law Times.*

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*The Knowledge of the Barrister.*—The late Lord Justice Fitzgibbon, when giving evidence before a Royal Commission on Intermediate Education, made some remarks on cramming which are worth recalling, since they bring out a part of the barrister's art that often escapes notice. Cramming, he defined as "the acquiring of superficial knowledge quickly for use of a temporary kind," and it was, he said, a faculty which barristers had to cultivate. If he retained all the facts and the law which he acquired for a paticular case, he would be incapable of learning anything else; so that the power of discharging knowledge quickly was as important to the successful advocate as the power of assimilating it quickly. The barrister of large practice to-day must indeed be ready to learn and to expound every branch of knowledge, the principles of natural and applied science, the nature of the most complex financial and mercantile transactions, the most varied social and political conditions —and this in addition to an enormous mass of law embodied in different systems each with its own procedure. It would pass any human intellect to be master permanently of this vast

domain; few can retain for long command over the legal part alone. The barrister, however, shews his excellence in his power of cramming up in a few days a subject to which other men have devoted their lives, and not only so as to understand it himself, but so as to be able to elucidate it to the Court. He is often accused of loving technicalities; yet skill consists largely in making intelligible for a Jury and even for a Judge technical methods and terms. He must keep his mind always open, ready and alert, so as to receive knowledge but not be weighed down by it. And to this end he must study the art of forgetting as well as the art of getting. It is, then, the more necessary for him to have a firm hold of the great principles of the law, so that he may apply them at once to any set of circumstances, however complicated, which he is called upon to investigate. Cicero said that the science of oratory comprehended all other knowledge, and the science of law, which in our day has largely taken the place of oratory, likewise requires of its highest exponents the comprehension of all knowledge. The smaller man may specialize in particular branches; the perfect advocate must be able at will, or with short preparation, to range over the whole field of human thought and discovery.—*The Canadian Law Times.*

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*Railway Passengers Leaning out of Train.*—SIR FREDERICK POLLOCK has the following interesting note on this subject in the July *Law Quarterly*.—*Anna Rama* v. *G. I. P. Ry. Co.*, 12 *Bombay Law Reporter* 73, to which our attention has been called by a Bombay correspondent, is, curiously enough, a case of the first impression so far as regards English and Indian authority. The arm of the plaintiff, a passenger who was leaning out of a railway carriage in an up train, was struck by the door of a carriage in a down train meeting it on another line, which door, by some means, had been left open. BEAMAN, J. delivered an elaborate judgment, and, either in this or in the argument, all the relevant and many irrelevant authorities were discussed. The learned Judge held, in effect, that a passenger who puts his arm or any part of his person, outside the train, does so at his own risk; at any rate, if there is an express warning against this practice. Such warnings are common in Europe, sometimes in

general terms and sometimes with reference to a specific portion of the line. They seem rather to assume that, in the absence of warning, it is not necessarily rash or unreasonable to lean out of the window; and on the frequented lines of central Europe they are often in two or even three languages, whereas here the notice was only in English, a point not mentioned in the judgment It was argued for the Company that its contract was only to carry passengers inside the carriages and not outside; this is cleverly put, but really a neat way of begging the question.

But it does not seem that the passenger, if he knew of the warning, did not act as a commonly prudent man. He was indeed not bound to anticipate that the doors of other trains on the line would be negligently left open; on the countrary he had a right to expect that they would be kept fastened, and this reason, at first sight, appears to be strong in his favour. The weak point of it is that open doors on other trains, as a matter of fact and common observation, was by no means the only danger to which projecting heads or limbs may be exposed; there may be very little clear space in passing through tunnels, covered bridges, and the like; and an express warning reminds the passenger of this kind of risk if it is not already notorious. It cannot be said, therefore, that he was not bound to be cautious. Then, if the passenger does put his arm outside he can still keep a look-out and draw it in when another train is passing. And on the whole it seems, even without any express warning, that not to keep any look-out for possible objects of collision is reckless, in fact, amounting to negligence in law. On the other hand (subject perhaps to mere possibilities of exceptional circumstances which, if they had existed, it was the plaintiff's business to prove) it is plain enough that the Company has no means of avoiding the result at the last moment; therefore, the finding for the defendant on the ground of contributory negligence was, in our judgment, correct. As to the inference of negligence against the Company in the first instance from the fact of a carriage door in a moving train being left open, there is no difficulty—*Tod* v. *North British Railway Company*: (1908) A. C. 352.

One or two remarks arise out of the general conduct of the case. We would humbly submit that talk about the Aristotelian categories of causation does not tend to enlightenment in a

modern Court of Justice, and may be seriously misleading in a country where Aristotle's language and thought are even more exotic than those of the Sanskrit books of logic in England. An Indian pleader with a sense of humour might retort some day by vouching Jaliness (galen) on the nature of his client's injuries. It should not be assumed that everything our learned friend Mr. Beven puts in a note is fit to be put in a judgment. Still less should it be assumed that, because Mr. Beven discusses American cases, they can be cited with profit in India. Counsel seems to have made some play with Mr. Beven's account of two contrary decisions, neither of them recent, in Pennsylvania and Massachusetts. We desire to point out that even the full reports of American cases may be confusing without some knowledge of the divergences between the law and practice of different States, as well as the general differences between American and English practice. It is no discredit to Indian Lawyers to say that such knowledge must be rare in India and not always accessible even in the High Courts. In Massachusetts, for example, a plaintiff complaining of negligence is held to prove, as part of his own case, that he was in the exercise of due care, and the right of the Judge to comment on matters of fact is subject to legislative or even constitutional restrictions in all or almost all State Jurisdictions (cf. POLLOCK on *Torts*, 8th Edn., 482). We hope the Indian High Courts will not encourage these transatlantic excursions; but if they must go so far abroad, we think Canadian or Australian decisions would be safer to play with.—*The Canadian Law Times.*

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*Imperial and International Appeals. —Political Offences and the Right of Asylum.*—The escape and re-capture of Savarkar, the Indian Law student who was arrested in England for seditious conduct in India, has given rise to some discussion in France as to whether the facts do not involve a breach on the part of the French officials of the right of asylum. Savarkar was being conveyed for the purposes of his trial to India on board the P. & O. Liner *Morea*, and while the ship was lying at her wharf in Marseilles, one of her ports of call, he escaped through a port-whole and landed on the quay. He

was seized by a French gendarme, and handed back to the British officers in whose custody he was being taken to India. The ship then proceeded on her voyage with Savarkar on board. It is asserted by the French socialistic press that the gendarmerie have violated the right of asylum which enured to Savarkar as a political offender. It is true that the practice of States negatives any *obligation* to surrender a fugitive political offender; but unless there is some domestic recognition of the offender's right of asylum in its territory, every Sovereign State has the right, free from all legal consequences, to exclude or deport any person whose presence might be considered dangerous to its safety or tend to prejudice the relations of such State with friendly Powers. Apart from the extradition laws, and the Aliens Act, 1905, there is some doubt whether a foreign criminal can be lawfully seized or expelled from England. In *Musgrove* v. *Chung Tang Toy*,[1] the Judicial Committee of the Privy Council gave expression to the view that an alien has no right enforceable by action to enter the realm; but this has been criticised as a dictum at variance with Common Law authority. (See *Ency. Laws of Eng.*, 2nd Edn., Vol. 5, p. 626.) COKE'S opinion is that England is a complete asylum to the foreigner who has not offended the laws. BALCKSTONE and CHITTY (*Prer. Crown*, p. 49) say that the Crown, at Common Law, has a right to order aliens out of the realm, or to keep them out, at any rate if they be not merchants having the right to enter the realm under the provisions of the *Magna Charta* (Art. 41). Opposed to this, and supporting the opinion of COKE, are extant opinions of the law officers affirming the illegality, at Common Law, of seizing or expelling a foreign criminal. (See *Ency. Laws of Eng. Ib*; *ubi sup*.). These considerations, it will be observed, have reference to the domestic side of the question and the individual right of the alien under the municipal law; they do not affect the abstract doctrine of international law that there is an inherent right in all Soverign States to exclude or expel strangers. Strictly speaking, there is no *right* of asylum enuring to the fugitive from justice under the modern rules of International Law. A State may or may not afford asylum as it sees fit. "The so-called right of asylum is certainly not a right of the foreigner to demand that the State, into whose territory he

1. (1891) A. C. 272.

has entered with the intention of escaping prosecution from some other State, should grant protection and asylum. For such State need not grant them." (OPPENHEIM : *Int. Law.* Vol. 1, (Peace), p. 371). So far as France is concerned, it seems that the matter is not complicated by any provisions of municipal law enabling an alien to claim protection. The question was fully discussed by the Judicial Committee of the Privy Council in the case of *In re Henry Adam*[1] in the year 1837, and it was there held that by Art. XIII of the *Code Civil* (which prevailed in the Mauritius previous to its surrender to the British Crown, and continued to regulate civil rights there) the domicile of an alien in French territory can only be obtained "*par l' autorisation du Government*," which, according to the law and practice in France, is an express and formal authority of the Government, and not a mere tacit or permissive acquiescence in respect of his residence there. Hence, in the absence of such authority, it was competent to the Governor in Council to deport an alien from the colony, notwithstanding it appeared that the person so deported had for a long period enjoyed the privileges and exercised the rights of a person duly domiciled in the island. Official authority to establish domicile is still required by French law so far as we have been able to discover, the amendment of Art. 13 C. N. by the Law of 1889 not having dispensed with that requirement. (See *Huc, Comm. du Code Civil*, Vol. 1., pp. 263, 267, § 267, 270.) Hence, it would seem that if the French Government adopts the action of the Police as an exercise of international comity, that Government would not be answerable, either before a domestic tribunal or in international law, for the surrender of Savarkar.—*The Canadian Law Times.*

## BOOK REVIEWS.

*The Succession Certificate Act*: BY MR. ALEXANDER KINNEY. The Cranenburgh Law-Publishing Press: 3 to 5, Bow Street, Calcutta. Price Rs. :—We are sure that this book will be useful to the profession. The author gives, in the introduction to the book, the proceedings of the Legislative Council which led to the passing of the Act. Under each section the cases decided thereunder are given with the substance of the decisions, whether

1. (1837) Moo. P. C. 400,

they were under the old Act XXVII of 1860 or under the new one. The author also adds some useful notes of his own. The anthor would have increased the utility of his work still further if he had arranged the cases in the order of the wording of the sections instead of clubbing them merely according to the reports in which they appeared. The get up of the book is neat and the book itself handy.

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*The Indian Student and the Present Discontent*: BY GARFIELD WILLIAMS, M. B. B. S. Hodder Strougton, London.—This little brochure presents some of the most important defects in the system of Indian education, and the learned writer has given serious attention to the subject and has some useful suggestions to make. The Universities in India, and more especially the authorities who have the control of education in this country, will do well to consider some of the aspects brought out in this book.

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*Bankruptcy Law*: BY EDWARD MANSON, *Barrister-at-Law*. 2nd Edition. Sweet & Maxwell, Limited, London. Price 7*s*. 6*d*.—Mr. Manson's *Bankruptcy Law* gives in a short compass and in a succinct form the various points of bankruptcy law useful to the student and the practitioner. It is a book eminently fitted for the student and is a useful guide to the other bigger books on the subject. To be useful to the practitioners, the author has, in the present edition, given references to the cases bearing upon the principles explained by him. We believe the book will be found useful to the student and to the practitioner.

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*Outlines of Medical Jurisprudence and Treatment of Poisoning*: BY MR. R. C. RAY. The Hare Pharmacy, 38, Amherst Street, Calcutta. Rs. 2 :—We welcome these outlines as eminently useful for students of Law and Medicine. The book will also serve as an excellent analysis of the science of Medical Jurisprudence for lawyers practising in the Criminal Courts. The analysis of matter leaves nothing to be desired, and considering the low price fixed on the book, we are sure that it will be within the reach of all students and practitioners alike.

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*Rouse's Practical Man* : 18th Edn.: BY E. A. SWAN. Published by Sweet & Maxwell, Ltd., London. Price 10s. 6*d*.

We welcome this neat volume which is the eighteenth edition of Rouse's *Practical Man*. The prior edition has been considerably revised and added to. The book is sure to serve as a useful book of reference to all business men—to whatever profession they may belong. A major portion of the book (Part I consisting of about 314 pages) is devoted to matters having special interest for lawyers such as conveyancing forms, stamps, etc. There are many useful observations given for drawing up wills, etc. Rules of the English Law of Property are also given. The book will prove specially useful to lawyers.

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## Acknowledgments.

**We beg to acknowledge receipt of the following publications :—**

*The Succession Certificate Act* by Alexander Kinney (1910).

*Medical Jurisprudence* and *Treatment of Poisoning* by Rames Chander Roy. Price Rs. 2.

*Indian Evidence Act* Embodying Questions of both Higher and Lower Grade, by B. M. Rungiah Naidu, Sub-Registrar, Devanhalli. First Edition. Price Re. 1.

*Rouse's Practical Man* (1910). Revised by Edgar A Swan, B.A., Eighteenth Edition.

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